398.

SUPREME COURT OF THE UNITED STATES.

No. 81.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

THE BANK OF THE METROPOLIS.

IN ERROR TO CIRCUIT COURT OF THE U. S. FOR WASHINGTON.

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Langtree & O'Sullivan, Print.—1840.

UNITED STATES OF AMERICA, *sct.* (L. S.)

The President of the United States to the Judges of the Circuit Court of the District of Columbia, in the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you, between the United States, plaintiffs, and the President and Directors of the Bank of the Metropolis, defendants, a manifest error hath happened, to the great damage of the said United States, as by their complaint appears: we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington, on the Monday of next, in said Supreme Court, then and there had and held; and that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right, and according to the laws and the custom of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of said Supreme Court.

Issued the 15th day of January, 1840.

WM. BRENT, *Clk.*

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the President and Directors of the Bank of the Metropolis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein the United States is plaintiff and you are defendant, to shew cause, if any there be, why the judgment rendered against the said United States should not be corrected, and why speedy justice should not be done to the parties aforesaid in this behalf.

Witness the Hon. Wm. Cranch, chief judge of the said circuit court, this 15th day of January, 1840.

Service acknowledged.

RICH'D S. COXE,
Att'y for Def't.

February 3d, 1840.

Style of Court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of November, being the twenty-fifth day of the same month, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth—

Present: The Hon. WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON, & JAMES S. MORSELL, *Ass't Judges.*
ALEXANDER HUNTER, Esquire, *Marshal.*
WILLIAM BRENT, *Clerk.*

In the record of proceedings of the same court, among others, are the following, to wit:

Parties.

THE UNITED STATES
vs.
THE PRESIDENT and DIRECTORS of the BANK of the METROPOLIS.

Appearance of Parties, and Cause docketed, by consent.

Be it remembered, that heretofore, to wit, on the 28th day of June, in the year of our Lord eighteen hundred and twenty-eight, the United States, by their attorney, Francis S. Key, Esquire, and the President and Directors of the Bank of the Metropolis, by Richard S. Coxe and James M. Carlisle, Esquires, their attorneys, appeared in the circuit court here, and docketed the above cause, by consent.

Rule—Nar.

And thereupon, on motion of the said President and Directors of the Bank of the Metropolis, it is ruled by the court here that the United States declare against the said President and Directors of the

Bank of the Metropolis, or judgment of the court here will be rendered against them in default thereof.

Whereupon the said United States, by their attorney aforesaid, pray leave of the court here to imparle until the fourth Monday of November next, and then to declare against the said President and Directors of the Bank of the Metropolis; and to them it is granted: the same day is given to the said President and Directors of the Bank of the Metropolis also.

November Term, 1838—*Appearance of Parties.*

At which said fourth Monday of November, in the year eighteen hundred and thirty-eight, came again into the circuit court here, as well the said United States, by their attorney aforesaid, as the said President and Directors of the Bank of the Metropolis, by their attorneys aforesaid: and thereupon the said United States, by their attorney aforesaid, declared against the said President and Directors of the Bank of the Metropolis in form following, to wit:

Nar.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

The President and Directors of the Bank of the Metropolis, late of Washington county, *was* attached to answer unto the United States in a plea of trespass on the case, and so forth; and whereupon the said plaintiff, by Francis S. Key, its attorney, complains, that whereas the said defendant, on the first day of March, in the year of our Lord one thousand eight hundred and thirty-eight, at the county aforesaid, was indebted unto the plaintiff in the sum of twenty-seven thousand eight hundred and eighty-one dollars and fifty-seven cents, current money, for sundry matters and articles, properly chargeable in an account, as by a particular account thereof, herewith into court exhibited, appears; and, so being indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook, and faithfully promised to the said plaintiff, to pay to the said plaintiff the aforesaid sum of money when the said defendants should be thereto afterwards required.

And whereas the said defendant, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, was indebted unto the said plaintiff in another sum of twenty-seven thousand eight hundred and eighty-one dollars and fifty-seven cents, like money, for the like sum of money by the said plaintiff, to and for the use of the said defendant, before that time paid, laid out, and expended, at the special instance and request of the said defendant, and for other money by the said plaintiff before that time lent and advanced to the said defendants, at their special instance and request, and for other money by the said defendant before that time had and received to the use of the said plaintiff; and being so indebted, the said defendant,

in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, undertook, and promised the said plaintiff to pay the said plaintiff the said last mentioned sum of money, when afterwards the said defendant should be thereunto required.

And whereas the said defendant, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then being in arrear and unpaid; and upon that account the said defendant was then and there found in arrear, and indebted to the said plaintiff in a large sum of money, to wit, in the further sum of twenty-seven thousand eight hundred and eighty one dollars and fifty seven cents, like money; and so being found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and promised to the said plaintiff to pay the said plaintiff the said last mentioned sum of money, when the said defendant should be thereunto afterwards required.

Yet the said defendant, not regarding their said several promises and undertakings, so by them made in this behalf as aforesaid, but contriving, and fradulently intending, craftily and subtilely to deceive and defraud the said plaintiff in this respect, have not yet paid the said several sums of money, or any part thereof, to the said plaintiff, (although so to do the said defendants were requested by the said plaintiff, to wit: on the same day and year aforesaid, and often afterwards, at the county aforesaid,) but they to do this have hitherto refused, and still refuse. Whereupon the said plaintiffs say they are injured, and have sustained damage to the value of fifty thousand dollars current money; and, therefore, the said United States bring suit, and so forth.

F. S. KEY,
Plaintiff's Attorney.

JOHN DOE,
RICHARD ROE, } Pledges, &c.

Rule—Plea.

Thereupon, on motion of the said United States by their attorney aforesaid, it is ruled by the court here that the said President and Directors of the Bank of the Metropolis answer to the declaration aforesaid of the said United States, in the plea aforesaid, or judgment by the court here will be rendered against them in default thereof.

Plea of non-assumpsit.

Whereupon the said President and Directors of the Bank of the Metropolis, by their attorneys aforesaid, defend the force and injury, when, &c., and say, that they did not assume upon themselves in

manner and form as the said United States above against them have complained; and of this they put themselves upon the country; and the said United States in like manner, and so forth.

Issue joined—Venire.

Therefore let a jury thereon appear before the court here on the fourth Monday of March next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c., the same day is given to the said parties then and there, &c.

March Term, 1839.

At which said fourth Monday of March, in the year eighteen hundred and thirty-nine, came again into the circuit court here, as well the said United States by their attorney as aforesaid, as the said President and Directors of the Bank of the Metropolis by their attorneys aforesaid.

Appearance of parties and continuance—November Term, 1839.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attornies aforesaid, and by order of the court here thereon, is continued until the fourth Monday of November next.

Appearance of parties.

And now, at this day, to wit: the said fourth Monday of November, in the year eighteen hundred and thirty-nine, came again into the circuit court here, as well the said United States by their attorney aforesaid, as the said President and Directors of the Bank of the Metropolis by their attornies aforesaid.

Order to empannel Jury.

Whereupon, for trying the issue aforesaid, it is ordered by the court here that twelve persons, from the panel of petit jurors returned to the court here by the marshal of the district aforesaid, be drawn by ballot; and thereupon the twelve persons so drawn being called, come, to wit:

Jurors' names.

Wm. Easby,
H. H. McPherson,
Vincent King,
Jno. B. Fergusson,
James Marshall,
E. Simms,
Thomas J. Belt,
James Summers,
Richard Butt,
William Hebb,
Geo. Marbury,
W. N. Waters.

Jury empanneled—Verdict for Defendants.

Who, being empanneled and sworn to say the truth in the premises, upon their oath do say, that the said defendants did not undertake in manner and form as the said plaintiffs within against them have complained; and the jury aforesaid do further, upon their oath, say, that "we of the jury do find for the defendant on the issue joined between the parties; and we do certify, that there is justly due and owing from the plaintiff to defendant the sum of three thousand three hundred and seventy-one dollars and ninety-four cents, with interest from the 6th March, 1838."

Wm. Easby,	Thomas J. Belt,
H. H. McPherson,	James Summers,
Vincent King,	Richard Butt,
Jno. B. Ferguson,	William Hebb,
James Marshal,	Geo. Marbury,
E. Simms,	W. N. Waters.

Judgment on Verdict.

And it is also considered by the court here, that the said defendants recover against the said plaintiffs the sum of by the court here unto them, the said defendants, on their assent adjudged, for their costs and charges by them about their defence in this behalf laid out and expended; and that said plaintiff take nothing by the written declaration, and go thereof without day.

Test: W. BRENT, *Clerk.*

Memorandum.

Before the jurors aforesaid retired from the bar of the court here, the said plaintiffs, by their attorney aforesaid, filed in court here the following bill of exceptions, to wit:

First Bill of Exceptions.

UNITED STATES
vs.
BANK OF METROPOLIS.

On the trial of this cause, the plaintiff offered, and gave in evidence to the jury, a certified statement of the accounts between the parties, exhibiting a balance in favor of plaintiffs to the extent of $. (Accounts copied in pages 28 to 45.)

And the plaintiffs, in the cross-examination of Dr. Mason, proved, that when the acceptance of said draft of Porter was made by him, he believes that examination of said Porter's account was made so as to ascertain that the amount of the acceptance was then due to

him, because such was the course of business in relation to such acceptances, and because he sees the acceptance is marked "noted" by a clerk of the department, but that he has no recollection of any such examination.

And the plaintiffs further offered in evidence the bank books containing the account of deposites made to the credit of the Treasurer of the United States, for the service of the Post Office Department, showing the deposites made in the bank at various times subsequent to the 16th July, 1836, to the credit of the Treasurer of the United States, for the service of the Post Office Department, and of the warrants of the treasurer drawn, from time to time, on said deposites, by which the balance claimed by the plaintiffs appears to be due on said account, if the acceptances aforesaid claimed by defendants, and the over draft of said E. F. Brown, are not allowed against it.

And further offered the letter of the Postmaster General to the defendants, of 16th July, 1836, and proved that the same was received by the defendants prior to the entry of said deposites in said account, and that the deposites as aforesaid, as stated in the said bank books, were made as required, and certificates thereof transmitted as required in said letter.—(See letter copied at page 136, &c.)

And further offered in evidence the books and accounts of said Post Office Department, showing that, at the time of said acceptance of the draft of said Porter, nor at any time since, was there due, according to the settlement of his accounts by the auditor, the said sum of $10,000, but that when the said draft was made, and when it fell due, there was nothing due to said Porter; and that, on the final settlement of his accounts since, there appears to be due to him about two thousand dollars, without charging him with this acceptance; and that, at the time of the acceptances of the said drafts of Reeside, there was not, according to the settlement of his accounts in said department, nor at the time they fell due, nor since, any thing due to said Reesides on his contracts with the department, as settled in the books of said department.

The said witness further stated, that at the time of said draft and acceptance of said Porter, he was the clerk who marked the same "noted," and that he believes he examined the account of said Porter, and considered that although nothing then appeared to be due to him, yet, that when the draft would fall due, there would be enough to meet said draft if the said Porter fulfilled his contracts; and that said Porter did fulfil the said contracts, but that the money he earned thereby was not, in the settlement of his accounts, allowed to him on account of the aforesaid charges against him of the draft from Mobile and the failures and forfeitures; but that, in the interim between the date of said acceptance and the period of its arrival at maturity, a sufficient sum had been earned, and carried to the credit of said Porter, to pay the said acceptances, but that he had also, within the said dates, been charged with the amount of a draft drawn by the postmaster at Mobile, on said Porter, and accepted by him,

which draft had been payable in the year 1833, and also with the failures and forfeitures incurred as contractor in 1833: which items were charged by order of said W. T. Barry, then Postmaster General.

And the defendant, to maintain the issue on his part, gave in evidence and proved by competent testimony, that, in addition to the items of credit stated in the plaintiff's account, defendant was entitled to a further credit of five thousand and forty-two dollars and fifty-nine cents.

And further proved, that in relation to the sum of six hundred and eleven dollars and fifty-two cents, called, in plaintiff's account, over draft of F. Brown, late agent, &c., that said Brown was the agent of the Post Office Department for the disbursement of the contingent fund of said department.

That, as said agent, he deposited in the Bank of Metropolis, on the thirtieth day of April, eighteen hundred and thirty-five, to his credit the sum of seven thousand and seventy dollars and twenty-four cents; which sum was paid, by a Treasury warrant, in his favor for that sum.

That he, from time to time, checked upon said fund and drew out said money by checks in the form following: (No checks found among the papers) Until the seventh of June, eighteen hundred and thirty-five, at which time he had this drawn out the sum of three thousand and seventy-six dollars and ninety-seven cents. That at that time the defendant received a communication from the Postmaster General, requesting that thenceforward the checks of said Brown should not be honored unless approved by Robert Johnson, the accountant of said department. That, subsequently, no such check was paid without such approval. That Brown, by checks approved by Johnson, continued to draw upon said fund and upon said bank until the second day of December, eighteen hundred and thirty-five, when the sums drawn amounted to seven thousand six hundred and seventy-one dollars and seventy-six cents. That on said day the Postmaster General addressed to defendant's cashier the following letter. (See page 46.) That subsequently accounts and bills, approved by said Johnson as mentioned in said letter, were presented to and paid by defendants up to the fourteenth of May, eighteen hundred and thirty-six; all of which were proved to have been paid on accounts and bills due by the Post Office Department; at which time, the said account exhibited a balance due the bank of six thousand seven hundred and sixty-seven dollars and eighty cents. That, on the twenty-sixth of May, eighteen hundred and thirty-six, there was a deposite of cash made to the credit of said account of six thousand one hundred and fifty six dollars and twenty eight cents; leaving the aforesaid balance of six hundred and eleven dollars and fifty two cents, for which defendant claims credit in this action with interest. That it is customary and usual for banks keeping accounts with public officers and agents to allow over drafts, as in other cases of persons in whom confidence is placed; and the balances created by

such over drafts are paid by such agents or officers by further advances of funds through the medium of Treasury warrants. That no particular draft or check of said Brown has been objected to as beyond his authority, but payment is refused on the allegation that he had misapplied the sum so claimed, and that he had no authority to overdraw, and by so doing was only personally responsible. That all the checks are in the same form, and furnish no means by which the bank could distinguish the defects for which such checks were drawn.

And the defendant further proved, that it held sundry drafts drawn upon the Post Office Department, as follows:

Drafts referred to in exceptions at page 19.

[$10,000.] *Washington*, April 14, 1835.

Ninety days after date, please pay to my own order ten thousand dollars, at the Metropolis Bank, and charge the same to account of

Your obedient servant,

EDWIN PORTER.

To R. C. MASON, Esq.,
Treasurer Post Office Department.

Accepted, R. C. MASON, *Treasurer.*

(Endorsed,) EDWIN PORTER.

[$4,500.] *Washington City*, October 17, 1835.

SIR: Ninety days after date, please pay to my own order four thousand five hundred dollars, for value received, and charge to my account, for transporting the mail.

Respectfully, yours,

JAS. REESIDE.

Hon. AMOS KENDALL,
Postmaster General.

Accepted on condition that his contracts be complied with.

AMOS KENDALL.

[$4,500.] *Washington City*, Oct. 23, 1835.

Ninety days after date, please pay to my order four thousand five hundred dollars, for value received, and charge to my account for transporting the mail.

Respectfully, yours,

JAS. REESIDE.

Hon. AMOS KENDALL.

Accepted on condition that his contracts be complied with.

AMOS KENDALL.

Oct. 20, 1835.

(Endorsed,) JAS. REESIDE.

[$3,000.] *Washington City*, October 28th, 1835.

Ninety days after date, please pay to my own order three thousand dollars, for value received, and charge to my account, for transporting the mail.

Respectfully, yours,

JAS. REESIDE.

Hon. AMOS KENDALL,
Postmaster General.

Accepted on condition that his contract be complied with.

AMOS KENDALL.

Oct. 20th, 1835.

(Endorsed.) JAS. REESIDE.

[$1,000.] *Washington City*, October 20, 1835.

Ninety days after date, please pay to my own order one thousand dollars, for value received, and charge to my account for transporting the mail.

Respectfully, yours,

JAS. REESIDE.

Hon. AMOS KENDALL,
Postmaster General.

Accepted on condition that his contract be complied with.

AMOS KENDALL.

Oct. 20th, 1835.

(Endorsed.) JAS. REESIDE.

That the same were duly protested for non-payment, and the department and parties duly notified. That the Bank of Metropolis, and other banks in the city of Washington, and elsewhere, have been, for many years, in the practice of discounting such acceptances. That this is often done for the accommodation of the department, often for the accommodation of the drawer, and frequently of both. That, from the year eighteen hundred and thirty-three, the pecuniary affairs of the department were much deranged, and it was frequently unable to pay debts due by it to contractors; that, under such circumstances, the department was in the practice of giving to contractors acceptances for sums less than was actually standing to their credit, unconditionally, and such acceptances were always taken up at maturity, prior to May, eighteen hundred and thirty-five, when Amos Kendall became postmaster. That occasionally, and with the special approbation of the Postmaster General, acceptances were given upon the faith of existing contracts, conditional upon the performance of the contracts, which were understood to become absolute if the contractor performed the services stated in the contract. That the draft drawn by E. Porter, as aforesaid, was believed by the witness, R. C. Mason, who gave the acceptance, to have been given for so much money actually earned

and due to him at the time of said acceptance. That those drafts drawn by said Reeside, as above, were generally, if not all, renewals of former acceptances, which had not been paid when they came to maturity; and further proved, that said Reeside, in fact, performed the services for which he was contractor in the year eighteen hundred and thirty-five, and that the money which he earned upon said contracts was applied, to an extent exceeding the amount due upon said drafts, to the extinguishment of balances created against him by re-charging him with sums of money which had been allowed by Mr. Barry, the former Postmaster General, to him, as contractor for carrying the mail, by giving him credit therefor in a general account current in the journal, but not entered in the leger, where his account remained unsettled when the present Postmaster General came into office; and further proved, that, in the year 1835, the defendant held acceptances of the same character to the amount of more than $70,000, all of which were under protest for non-payment; that subsequently, and prior to the institution of this suit, all the foregoing acceptances had been paid by the department, excepting those now in dispute, including interest and costs of protest, and the said sums so paid, charged to the accounts of said contractors, the drawers.

And the defendant further gave in evidence the correspondence between the defendant and the Post Office Department. (See pages 47, &c.)

And further gave in evidence one of the contracts with said James Reeside, (see pages 119, &c.) and proved that all the other contracts were in conformity with said printed form, mutatis mutandis.

And it was agreed, that the said set-off claimed by the defendant should be considered as having been presented to the proper accounting officers of the treasury, and rejected.

Upon the evidence aforesaid, the counsel for the plaintiffs prayed the court to instruct the jury, as follows:

That, upon the evidence aforesaid, the defendants are not entitled, in this action, to set-off against the plaintiffs' demand, the amount of the acceptances aforesaid so given in evidence by the defendants, nor the amount of the over-draft of E. F. Brown.

Which instruction the court refused to give; to which refusal, the plaintiffs, by their counsel, except, and pray the court to sign and seal this bill of exceptions, which is done accordingly this 2nd day of January, 1840.

W. CRANCH, (SEAL.)
B. THRUSTON, (SEAL.)
JAMES S. MORSELL. (SEAL.)

Second Bill of Exceptions.

And the plaintiffs, by their counsel, further prayed the court to instruct the jury, as follows:

If the jury believe, from the evidence, that when the acceptance of

the draft of E. Porter was given by the then treasurer of the department, there was nothing due to said Porter standing on the books of the Post Office Department, and that on the books of the department, when the acceptance fell due, there was nothing due to him, then the defendants cannot off-set the amount of said acceptance against the plaintiffs' claim in this action.

That if the accounts of E. Porter and Reeside, as contractors, with the Post Office Department, were not finally settled on the books of the Post Office Department when the present Postmaster General came into office, it was his duty to have said accounts settled; and if in such settlement there were credits claimed by them as allowed by the order of Mr. Barry, when Postmaster General, and entered in the journal, but not carried into their accounts in the leger, and finally entered as credits in their accounts, which credits were for extra allowances which the said Postmaster General was not legally authorised to allow to them, then it was in the power, and was the duty of the present Postmaster General, to disallow such items of credit.

Which instructions the court refused to give; to which refusal, the plaintiffs, by their counsel, except, and pray the court to sign and seal this bill of exceptions, which is done accordingly this second day of January, A. D. eighteen hundred and forty.

W. CRANCH. (SEAL.)
B. THRUSTON, (SEAL.)
JAMES S. MORSELL. (SEAL.)

EXHIBIT A.—Referred to in Bill of Exceptions, Page 13.

The Bank of the Metropolis, in account with the United States.

DR.

1837.		
Sept. 30	To the following sum, standing at the credit of the Treasurer of the United States, for the service of the Post Office Department, in said Bank, on this day, per acknowledgment contained in the bank-book of said Bank, marked No. 1, herewith - - - - - - - - -	$36,186 89
Oct. 13	To the following sum, standing at the credit of the Treasurer of the United States, for the service of the Post Office Department, (on special account,) in said Bank, on this day, per acknowledgment contained in the bank-book of said Bank, marked No. 2, herewith - - - - - -	10,586 06
July 10	To short credit for deposit, this day, by E. N. Robinson; the bank-book showing a credit for $25, whilst the certificate issued by the Bank is for $50—Difference - - -	25 00
Aug. 26	To the following sum deposited in said Bank, per certificate, in favor of Wm. Jones, P. M., not credited in bank-book -	500 00
Oct. 6	To the following sum deposited in said Bank, per certificate, in favor of A. A. Hall, not credited in bank-books - -	30 00
" 9	To the following sum deposited in said Bank, per certificate, in favor of G. W. Jones, per account of Ch. Dunn, not credited in bank-books - - - - - - -	25 89
" 10	To the following sum deposited in said Bank, per certificate, in favor of H. H. Corcoran, not credited in bank-books -	331 19
" "	To the following sum deposited in said Bank, per certificate, in favor of Wm. Jones, not credited in bank-books - -	1,384 69
" 11	To the following sum deposited in said Bank, per certificate, in favor of Daniel Bryan. not credited in bank-books - -	1,055 00
" 14	To the following sum deposited in said Bank, per certificate, in favor of Wm. N. Bean, not credited in bank-books - -	25 00
" 24	To the following sum deposited in said Bank, per certificate, in favor of Aquilla Bateman, not credited in bank-books -	27 91
" "	To the following sum deposited in said Bank, per certificate, in favor of Daniel Bryan, not credited in bank-book - -	209 66
		$50,387 29
" 31	To balance due the United States - - - -	$27,881 57

EXHIBIT A.—Referred to in Bill of Exceptions, Page 13.

The Bank of the Metropolis, in account with the United States.

CR.

1837.		
Oct. 31	By the amounts of the following warrants, drawn by the Postmaster General, countersigned by the Auditor of the Treasury, for the Post Office Department, and directed by the Treasurer of the United States to the said Bank for payment; which warrants have been duly charged and returned by said Bank as paid, to wit:	
Oct. 3, 1837,	Warrant No. 5030, in favor of W'n Lewis, for	$1,306 80
" " "	5031, do B. Chambers - -	330 50
" 4, "	5039, do J. S. Hayward, assee. -	29 79
" 3, "	5029, do Langtree & O'Sullivan -	3,069 50
" 2, "	5018, do John Thompson -	61 25
" " "	5010, do Williams & King -	1,575 00
Sept. 16, "	4905, do W. B. Carter - -	31 60
Oct. 2, "	5011, do J. F. Cleveland, assee. -	32 43
" 5, "	5044, do M. T. Jones - -	270 00
" 4, "	5041, do John Tipton - -	478 75
Sept. 21, "	4945, do Wilson & King -	10 00
Oct. 9, "	5054, do Pratt & Gaines - -	886 21
Sept. 14, "	5070, transf. favor, Bk. of Virginia	10,000 00
Oct. 9, "	5055, in favor of G. A. Sublett, ass.	302 22
" 10, "	5072, do Brown, Waller & Co. -	486 82
" 9, "	5053, do B. R. Hall - -	22 11
" 7, "	5050, do John Dunn - -	601 23
" 11, "	5076, do G. W. Avery - -	24 50
" 7, "	5052, do J. O. Williamson -	379 69
" " "	5051, do B. Williamson - -	26 65
" 11, "	5077, do John D. Boteler -	401 25
" 13, "	5084, do M. Dubbs, Jr., assee. -	175 00
" " "	5082, do D. R. McNair - -	612 05
" 12, "	5080, do S. Birdsall, assee. -	4 17
May 16, "	3583, do B. Kelly - -	60 37
Oct. 13, "	5086, do J. D. Winters - -	500 00
" " "	5085, do R. W. Tate -	87 50
" 14, "	5087, do M. M. Whitney -	116 21
" 12, "	5081, do Samuel Newland & Co.	317 80
" 14, "	5088, do Newland & Tate -	78 67
" 13, "	5083, do Black & Colville -	222 65
Sept. 13, "	4827, do Warner Fellows -	5 00
	Balance -	27,881 57
		$50,387 29

Memorandum.—The following warrants have likewise been directed to the said bank for payment, for which the bank will be entitled to credit, if they are paid by the bank, upon their being duly returned with evidence of such payment, to wit:

July 29, 1836,	Warrant No. 22,	in favor of	J. B. Skelton,	for	$14 59
" "	" 26,	do	Jas. Towns,	"	4 51
Feb. 25, 1837,	" 2428,	do	Wm. H. Haeg,	"	3 13
Aug. 23, "	" 4576,	do	Step. Onion,	"	23 75
Oct. 28, "	" 5098,	do	W. J. Graves,	ass.	8 59
					$54 57

And a transfer warrant No 74, dated 18th September, eighteen hundred and thirty-seven, in favor of the Farmers' Bank of Virginia, at Lynchburg, for $5,000 on the said bank, which the Postmaster General has requested the Farmers' Bank to return to the Treasurer of the United States, in order that it may be cancelled, but which has not as yet been so returned.

Statement of differences between the foregoing official account, and the account of the Bank, dated 31st October, 1839, of which a copy is furnished:

Balance due United States, per official account		$27,881 57
Do do do per Bank account		1,031 97
Difference		$26,849 60

Which difference arises as follows:

1. From short credit, 10th July, 1837, as explained in official account	25 00
2. From omission of credit, August, 26, 1837, as explained in official account	500 00
3. The following charges, made in said account of the Bank, rejected, the same not being founded on warrants of the Postmaster General, drawn according to law, and countersigned by the Auditor, and accompanied by the order of the Treasurer of the United States, directing payment, to wit:	
Oct. 10, 1837, Draft protest, and interest,	$11,350 08
" " " "	3,321 25
" " " "	4,969 75
" " " "	4,966 75
" " " "	1,105 25
" " E. F. Brown, over draft, by order of Cash'r	611 52
Difference accounted for	$26,849 60

I certify that the foregoing is a correct statement of the account of the treasurer of the United States, for the service of the post office department, with the Bank of the Metropolis, as adjusted at this office.

In testimony whereof, I have subscribed my name, and caused to be affixed the seal of the auditor of the treasury, for the post (L. S.) office department, at Washington, this fifteenth day of February, in the year one thousand eight hundred and thirty-eight.

C. K. GARDNER, *Auditor.*

Monthly Return

DR. *The Treasurer U. S., service of the Post Office*

1837.		
Sept. 16,	To warrant No. 4,905, W. B. Carter, ass'ee, -	$31 60
Oct. 2,	To do. " 5,011, J. F. Cleveland, ass'ee,	32 43
Oct. 5,	To do. " 5,044, M. F. Jones, - -	270 00
Oct. 4,	To do. " 5,041, John Tipton, ass'ee, -	478 75
Sept. 21,	To do. " 4,945, Malson & King, as's,	10 00
Oct. 9,	To do. " 5,054, Pratt & Grames, -	886 21
Sept. 14,	To do. " 70, Bank Va., Richmond,	10,000 00
Oct. 10,	To draft protested, and interest, - - -	11,350 08
Oct. 10,	To do. do. do. - - -	3,321 25
Oct. 10,	To do. do. do. - - -	4,969 75
Oct. 10,	To do. do. do. - - -	1,105 25
Oct. 9,	To warrant No. 5,055, G. A. Sublett, ass'ee,	302 22
Oct. 10,	To do. " 5,072, Brown, Waller & Co.,	2,186 82
Oct. 9,	To do. " 5,053, B. R. Hall, - -	22 11
Oct. 7,	To do. " 5,050, John Dunn, - -	601 23
Oct. 11,	To do. " 5,076, Geo. W. Avery, -	24 50
Oct. 7,	To do. " 5,052, J. O. Williamson, -	379 69
Oct. 7,	To do. " 5,051, B. Williamson, -	379 69
Oct. 11,	To do. " 5,077, John D. Boteler, -	401 25
Oct. 13,	To do. " 5,084, Martin Dubbs, jr. as'e,	175 00
Oct. 13,	To do. " 5,082, D. R. McNair, -	612 05
Oct. 12,	To do. " 5,080, L. Birdsall, ass'ee, -	4 17
May 26,	To do. " 3,583, B. Kelly, - -	60 37
Oct. 13,	To do. " 5,086, John D. Winters, -	500 00
Oct. 13,	To do. " 5,085, R. W. Tate, - -	87 50
Oct. 14,	To do. " 5,087, M. M. Whitney, -	116 21
Oct. 12,	To do. " 5,081, S'l Newland & Co., -	317 80
Oct. 14,	To do. " 5,088, Newland & Tate, -	78 67
Oct. 13,	To do. " 5,083, Black & Coleville, -	222 68
Sept. 13,	To do. " 4,827, Warner Fellows, -	5 00
Oct. 10,	To E. F. Brown's over-draft, by order cashier,	611 52
Oct. 21,	To balance, - - - - - - -	1,031 97
		$43,489 45

for October, 1837.

Department, in acc't with the Bank of the Metropolis. CR.

1837.		
Sept. 30,	By balance, - - - - - - -	$36,186 89
Oct. 10,	By balance from special account, - -	5,984 99
Oct. 11,	By Daniel Bryan, P. M., Alexandria, D. C.,	1,055 00
Oct. 14,	By Wm. N. Bean, P. M., Bryantown, Md., -	25 00
Oct. 24,	By Daniel Bryan, P. M., Alexandria, D. C.,	209 66
Oct. 24,	By Aquilla Bateman, P. M. Port Tobacco, Md.,	27 91
		$43,489 45
Oct. 31,	By balance, - - - - - -	$1,031 97

Received from the cashier of the Metropolis Bank, the 9th February, 1838.

C. K. G., *Aud'r.*

Monthly Return for October, 1837.

DR. *The Treasurer U. S., service of the Post Office Department, special in acc't with the Bank Metropolis.* CR.

1837.			1837.		
Oct. 3,	To warrant No. 5,030, Washington Lewis,	$1,306 80	Sept. 30,	By Balance,	$12,357 83
" 3,	To warrant No. 5,031, Benjamin Chambers,	330 50			
" 4,	To warrant No. 5,039, J. L. Hayward, ass'ee,	29 79			
" 3,	To warrant No. 5,029, Langtree & O'Sullivan,	3,069 50			
" 2,	To warrant No. 5,018, John Thompson,	61 25			
" 2,	To warrant No. 5,010, Williams & King,	1,575 00			
" 10,	To balance carried to general account,	5,984 99			
		$12,357 83			$12,357 83

(Original.)—*Special Acc.*

BANK OF THE METROPOLIS,
July 10, 1837.

The Treasurer of the United States, for the service of the Post Office Department, has credit in the bank for fifty dollars, deposited by E. N. Robinson, Buckland, Virginia, in specie, for which I have signed duplicate receipts.

GEO. M. DAVIS,
$50. *R. Teller.*

(Original.)—*Special.*

BANK OF THE METROPOLIS,
August 26, 1837.

The Treasurer of the United States, for the service of the Post Office Department, has credit in this bank for five hundred dollars, in specie, deposited by Wm. Jones, Postmaster, Washington City, District of Columbia, for which I have signed duplicate receipts.

W. L. CROSSFIELD,
$500. *Book-keeper.*

(Duplicate.)—*Special Acc.*

BANK OF THE METROPOLIS,
October 9, 1837.

The Treasurer of the United States, for the service of the Post Office Department, has credit in this bank for twenty-five $\frac{89}{100}$ dollars, deposited by Hon. Geo. W. Jones on acc. of Charles Dunn, late postmaster, Golconda, Illinois, for which I have signed duplicate receipts.

GEO. M. DAVIS,
$25 $\frac{89}{100}$. *R. Teller.*

Principal	$9 65
Interest	16 24
	$25 89 No estimate.

(Original.)—*Special Acc.*

BANK OF METROPOLIS,
October 6, 1837.

The Treasurer of the United States, for the service of the Post Office Department, has credit in this bank for thirty dollars, deposited by A. A. Hall, postmaster, Good Luck, Maryland, for which I have signed duplicate receipts.

GEO. M. DAVIS,
$30. *R. Teller.*

(Original.)—*Special Acc.*

BANK OF METROPOLIS,
October 10, 1837.

The Treasurer of the United States, for the service of the Post Office Department, has credit in this bank for three hundred thirty-one $\frac{19}{100}$ dollars, deposited by H. H. Corcoran, postmaster, Georgetown, D. C., for which I have signed duplicate receipts.

GEO. M. DAVIS,
R. Teller.

$331 $\frac{19}{100}$.

(Original.)—*Special Acc.*

BANK OF THE METROPOLIS,
October 10, 1837.

The Treasurer of the United States, for the services of the Post Office Department, has credit in this bank for thirteen hundred eighty-four $\frac{69}{100}$ dollars, deposited by Wm. Jones, Washington, D. C., for which I have signed duplicate receipts.

GEO. M. DAVIS,
R. Teller.

$1,384 $\frac{69}{100}$.

(Original.)—*Special Acc.*

BANK OF METROPOLIS,
October 11, 1837.

The Treasurer of the United States, for the service of the Post Office Department, has credit in this bank for one thousand fifty-five dollars, deposited by Daniel Bryan, postmaster, Alexandria, D. C., for which I have signed duplicate receipts.

GEO. M. DAVIS,
R. Teller.

$1,055.

(Duplicate.)—*Special Acc.*

BANK OF METROPOLIS,
October 14, 1837.

The Treasurer of the United States, for the service of the Post Office Department, has credit in this bank for twenty-five dollars, deposited by W. N. Bean, postmaster, Bryantown, Md., for which I have signed duplicate receipts.

GEO. M. DAVIS,
R. Teller.

$25.

(Duplicate.)—*Special Acc.*

BANK OF METROPOLIS,

October 24, 1837.

The Treasurer of the United States, for the service of the Post Office Department, has credit in this bank for twenty-seven $\frac{91}{100}$ dollars, deposited by Aquilla Bateman, postmaster, Port Tobacco, Charles Co., Md., for which I have signed duplicate receipts

GEO. M. DAVIS,

$27 $\frac{91}{100}$. *R. Teller.*

(Duplicate.)—*Special Acc.*

BANK OF METROPOLIS,

October 24, 1837.

The Treasurer of the United States, for the service of the Post Office Department, has credit in this bank for two hundred and nine $\frac{66}{100}$ dollars, deposited by Daniel Bryan, postmaster, Alexandria, D. C., for which I have signed duplicate receipts.

GEO. M. DAVIS,

$209 $\frac{66}{100}$ *R. Teller.*

I certify that the foregoing transcript, in pages 5, 6, 7, 8, 9, and 10, are correct copies of the originals in this office.

In testimony whereof, I have subscribed my name and caused to be affixed the seal of the Auditor of the Treasury, for the [SEAL.] Post Office Department at Washington, this fifteenth day of February, in the year one thousand eight hundred and thirty-eight.

C. K. GARDENER, *Auditor.*

Received from the cashier of the Metropolis Bank the 9th February, 1838.

C. K. G., *Auditor.*

(Check referred to in Bill of Exceptions not among the papers.)

Letter of Postmaster General to Cashier, referred to in Bill of Exceptions, at page 18.

POST OFFICE DEPARTMENT,

December 2, 1835.

SIR: The contingent fund of this department is exhausted, but the public service requires that a number of bills, chargeable to that appropriation, shall be paid sooner than the usual sum can be obtained from Congress. I therefore request the favor of your bank to pay

such bills against the department, of that character, as may be presented with the certificate that the amount is allowed, signed by Robt. Johnston, accountant of this department.

Very respectfully, your obedient servant,

AMOS KENDALL.

GEO. THOMAS, Esquire,
Cashier, &c.

Correspondence between the Postmaster General and the Bank of Metropolis, referred to in Bill of Exceptions, at page 23.

POST OFFICE DEPARTMENT,
March 19, 1838.

SIR: In compliance with a resolution, adopted by the Senate on the 9th day of March, 1838, I have the honor to transmit copies of sundry communications which have passed between me and the cashier of the Bank of the Metropolis, marked A to G, inclusive.

Excepting the refusal, in common with other banks, to pay the warrants of this department in gold and silver, or an equivalent, commencing in May last, and the seizure of both a general and special deposite of moneys in the Treasury to meet alleged claims, under the circumstances exhibited in the annexed papers, the Bank of Metropolis has faithfully discharged its duties as a deposite bank for this Department.

Very respectfully, your obedient servant,

AMOS KENDALL.

Hon. R. M. JOHNSON,
Vice President, &c. &c.

A.—Letter A.

BANK OF THE METROPOLIS,
October 11, 1837.

SIR: The accepted bills by your department, owned by this bank, now amount to $26,324 60. The Board of Directors have concluded to submit this case to the President of the United States for his consideration; and, until his views upon the subject are ascertained, they have instructed me to request of you not to draw your balance below what will cover the debts due to the bank, and hope this course will be agreeable and acceptable to yourself. The balance now to your credit is $28,959 96.

I am, with very great respect,
Your most obedient servant,

GEO. THOMAS, *Cashier.*

AMOS KENDALL, Esquire,
Postmaster General.

B.—Letter B.

POST OFFICE DEPARTMENT,
October 19, 1837.

SIR: Sickness for some days, and incessant engagements since, have prevented an earlier answer to your letter of the 11th October. The accepted bills of this department, held by your bank, will be cheerfully and promptly paid, whenever any thing shall become due to the drawers, or whenever the department shall be required to pay them by act of Congress, and an appropriation made therefor. But as they have not heretofore, so no reason is perceived why they should hereafter be taken into the account between the bank and the Treasury; and the department cannot promise or consent to any course which might be construed to change the character of the claims. Repeating the assurance, that the bills will be promptly paid, whenever they can be by lawful authority, I have to express my confidence, that the bank will not dishonor the drafts of the department on that account.

Very respectfully, your obedient servant,
AMOS KENDALL.

GEORGE THOMAS, Esq.,
Cashier Bank of Metropolis.

C.—Letter C.

POST OFFICE DEPARTMENT,
November 2, 1837.

SIR: On the 19th day of October last, it appears that your bank protested a warrant of this department for $3,853 12, drawn in favor of McLean & Saltmarsh, for want of funds. The books of this department show, that there was, on that day, to the credit of the Treasurer of the United States, for the service of the Post Office Department, in your bank, the sum of $21,866 73.

I deem it my official duty to inquire of you, under what authority these funds have been taken out of the Treasury, so as to justify a refusal to pay the warrants of this department for want of funds.

Very respectfully, your obedient servant,
AMOS KENDALL.

GEORGE THOMAS, Esq.,
Cashier Bank of Metropolis.

D.—Letter D.

BANK OF THE METROPOLIS,
November 6, 1837.

SIR: I have received your letter of the 2d instant, and, according to your request, do myself the honor to reply to it.

I beg leave to call your attention to my letter of the 11th of October, wherein I made a statement of our account, and requested you not to draw your balance below what would cover the accepted bills by your department held by this bank.

In the absence of any answer to my letter, your check for $3,853 12, presented on the 19th October, if paid, would have overdrawn your account, and, on that ground, payment was refused.

Without, at present, going into particular facts and circumstances of our claim, we briefly answer to your inquiry, "under what authority those funds have been taken out of the treasury so as to justify a refusal to pay the warrants of this department for want of funds;" that there was an honest debt due to us from your department, as we are ready to prove before any impartial tribunal; that there was, at the same time, money placed in our hands for your use. This money, having passed out of the treasury, could not be re-drawn by it, or by any other than the Postmaster General; it was, to all intents and purposes, the money of your department. And having long in vain endeavored to obtain from you payment of our just demand, we have, at length, by the authority of justice, usage, and law, charged to your account the amount of that debt, thus retaining so much of your money: all of which, upon more consideration and reflection, we hope you will not disapprove. And, let me add, sir, that, in taking this step, our own opinion was confirmed and sustained by that of able counsel.

We have reluctantly resorted to this measure, and only in self-defence and protection. Still anxious, as we are, to avoid all imputation or suspicion of unfriendliness or improper motive—confiding, at the same time, in your disposition to have justice awarded to us, we respectfully propose that an amicable suit be brought to the approaching term of the circuit court of this district, and there decided. To this tribunal of the Government, of which your department is itself a branch, it is presumed you can have no possible objection.

I am, with great respect, your obedient servant,
GEO. THOMAS, *Cashier.*

Hon. AMOS KENDALL,
Postmaster General.

E.—Letter E.

POST OFFICE DEPARTMENT,
November 14, 1837.

SIR: Your letter of the 6th instant, in reply to mine of the 2d, has been received. I reciprocate the assurance, that, in the course I think it my duty to pursue in the controversy which has arisen between this department and the Bank of the Metropolis, there is nothing of personal unfriendliness towards the managers of that institution. Although it is sometimes difficult, it is always desirable, to exclude all personal feeling from matters which are purely official; and I trust that nothing will arise, in the course of this discussion, or the measures which may grow out of it, to change the relations which exist between myself and the gentlemen connected with your bank as men, and as fellow-citizens. Indeed, the respect which I entertain for their good intentions, and their purpose to obey the laws of the land in the management of your bank, as well as in their private walks, inspires a confidence that they will recede from the ground now occupied, the moment they are apprised of the errors of fact and law, on which their proceedings have heretofore been founded. The grounds on which you endeavor to justify the retention of moneys, deposited in your bank for the service of this department, are as follows, viz:

"There was an honest debt due to us from your department, as we are ready to prove before any impartial tribunal. There was, at the same time, money placed in our hands for your use. This money, having passed out of the Treasury, could not be re-drawn by it, or by any other than the Postmaster General. It was, to all intents and purposes, the money of your department; and having long endeavored to obtain from you payment of our just demand, we have at length, by the authority of justice, usage and law, charged to your account the amount of that debt; thus retaining so much of your money."

I am happy to perceive, by this exposure, that the managers of your bank did not suppose themselves, in the course they have adopted, to be taking money out of the Treasury. The Constitution declaring, that no money shall be drawn from the Treasury, except in pursuance of appropriations made by law; and Congress having made no appropriation to pay the debts credited by the bare acceptances of the Postmaster General, it appeared to me extraordinary that your bank should have assumed the power of Congress, to make an appropriation, and take money out of the Treasury to pay it, in palpable violation of that provision. I am happy to be relieved by finding, that they did not suppose themselves taking money out of the Treasury, but merely setting off the claim against money which had "*passed out of the Treasury.*" Under this view of the subject I cannot doubt, that if I satisfy them that this is an error;

that the moneys in question have not, in fact, passed out of the Treasury, but are, to all intents and purposes, *in* the Treasury, as much as any moneys deposited in bank possibly can be, they will, at once, recede from the ground they have assumed.

The 1st section of the act to change the organization of the Post Office Department, &c., passed July 2d, 1836, is in the following words, viz: "That the revenues arising in the Post Office Department, and all debts due to the same, shall, when collected, be paid, under the direction of the Postmaster General, into the Treasury of the United States." The 3d section provides as follows, viz: "That the aggregate sum required for the service of the Post Office Department, in each year, shall be appropriated by law out of the revenue of the department; and that all payments of the receipts of the Post Office Department into the Treasury shall be to the credit of said appropriation." By the 4th section, it is provided, "That the sums appropriated for the service aforesaid shall be paid by the Treasurer." By the 5th, "That the Treasurer of the United States shall give receipts for all moneys received by them to the credit of the appropriation for the service of the Post Office Department." By the 6th, "That the appropriations for the service of the Post Office Department shall be disbursed, by the Treasurer, out of the moneys paid into the Treasury for the service of the Post Office Department." And by the 7th, "That the Treasurer shall render his accounts of the moneys received and paid by him on account of the Post Office Department, quarterly, to the Auditor," &c.

The obvious intention of these provisions was, to put an end to all deposites in bank to the credit of the Postmaster General, or the Post Office Department, and place the moneys of the department in the Treasury, to be drawn out by the Treasurer only in pursuance of appropriations. In execution of this law, I requested your bank, by letter dated the 16th day of July, 1836, to transfer the sum of $25,801 83, then remaining on deposite at the credit of the Post Office Department, to that of the Treasurer of the United States, for the service of the Post Office Department; with which you readily complied. On, or about the 18th day of July, in compliance with my request, you transferred, in like manner, an additional sum of $8,179 95, remaining to the credit of this department. From that time down to this, all sums placed in your bank on deposite by this department, or by postmasters, have been placed to the credit of the Treasurer, as the certificates of deposite given by you abundantly show. In this manner, and in no other, have the funds in your bank, and all others belonging to this department, been paid into the Treasury as required by law; out of which they could not be taken, but by authority of the Treasurer's check, endorsed upon the warrant of the Postmaster General. This department has no account with your bank. The Postmaster General cannot control the funds of the department in any other manner than through the Treasurer. If he were to issue to you a direct order to pay moneys, in your bank, to Mr. Porter, or Mr. Reeside, or any one else, that order would

be palpably illegal; and if you paid the money upon it, you could not obtain a credit in settlement of your account with the Treasurer. From the law and the facts here set forth, you will perceive that the moneys you have charged up against the acceptances of this department have not "*passed out of the Treasury*," but are still *in the Treasury*, as effectually as any moneys deposited in bank can be. Your account is with the Treasurer, and not with this department; and against that account you have charged up these claims. And if the direct order of the Postmaster General, without the check of the Treasurer, could not legalize the payment of a sum of money thus deposited, how is it possible that his bare acceptance in favor of any one, admitting it to have all the legal effect you maintain, can confer any such authority?

When you examine this point carefully, and become convinced, as you must be, that the moneys stopped by you are in the Treasury, I cannot doubt that you will recede from the position you have taken. You state in your letter that you had "long endeavored to obtain from me payment of your just demand." By the 8th section of the act already referred to, an auditor is created, whose duty it is "to receive all accounts arising in the Post Office Department, or relative thereto, to audit and settle the same, *and certify their balances to the Postmaster General*;" and the same section provides for an appeal to the First Comptroller of the Treasury, if either party shall be dissatisfied with the auditor's decision. By the 9th section of the same act, the power of the Postmaster General to draw warrants, or pay out the moneys of the department, is limited to cases where balances may be reported due by the auditor, with the exception only of advances to special agents to defray their expenses.

As no report of any balances due to your bank on account of the claim in question had ever been made to me by the auditor, I requested him to inform me whether that claim had ever been presented to him for adjustment; and, if so, what proceedings were had thereupon. He informed me, in reply, that no such claim had ever been presented to him for settlement. Hence you will perceive that, instead of endeavoring to obtain from me payment of your demand, you have failed to take the first step, under the act of 1836, by which I could be authorised to make the payment. And, by adverting to the 15th section of that act, you will find that no set-off can be allowed in any suit brought by the United States, on account of this department, unless the claim offered in set-off "shall have been presented to the auditor, and by him disallowed in whole, or in part," with a single exception not applicable to this case.

Under these circumstances, what is the attitude occupied by your bank? Without taking the first step to procure a settlement of their claim, according to law, or even to put it in an attitude to be offered in set-off in a court of justice, they assume the powers of auditor for this department and First Comptroller of the Treasury, and settle their own account; they then assume the power of Congress to make an appropriation; and, lastly, they assume the powers of the

Postmaster General and Treasurer, and take the money out of the Treasury to pay it. I am sure they did not consider themselves as grasping these powers; but, upon a review of the case, they will find that this is the exact attitude in which they stand. No precedent exists, it is believed, for such a claim of power. The Bank of the United States, when it assumed the power to settle its own claim for damages on the noted protest of the Government bill of exchange on the French Government, did not undertake to set it off against moneys in the Treasury, but against dividends accruing to the Government upon its stock in that bank.

But, independent of these conclusive objections to the course adopted by your bank, the legality and justice of the claims now set up against this department are utterly denied. The first item of claim I propose to notice, is the draft of Edwin Porter, upon R. C. Mason, Esquire, Treasurer of the Post Office Department, for $10,000, at ninety days, dated 14th April, 1835, accepted by said Mason, Treasurer, without date, and protested for non-payment on the 16th day of July, 1835. This you have charged up against the Treasurer of the United States, with interest, amounting in all to $11,350 08.

The reason why the draft was not paid by the department, as well as I remember, was, that nothing, or not a sufficient amount, was due to Mr. Porter when it came to maturity. It is maintained by me, that this acceptance, though absolute on its face, was, nevertheless, conditional in law, and that the bank knew it when they gave value for it. Officers of the Government are agents of the public with limited powers, and the limitations are known to every one, because they are found in the general law of the land. One of the most important and well known limitations, is, that they shall not pay away the public moneys without an authorised equivalent in the public services. This principle is so plain and well-established, that the humblest members of the community know and recognize its existence and its wisdom. Not having legal authority to pay away, *in presenti*, the public moneys where nothing is due, it is equally evident that they cannot incur an obligation to do it *in futuro*. Every obligation, or promise, given by them to pay public moneys, however absolute on its face, is qualified and conditioned by the law of the land, and means nothing more than that they will pay if the amount be due. Upon this plain and well-known principle, the acceptance of Mr. Mason, in favor of Mr. Porter, created no other obligation than that the department would pay the amount to his order, if the amount should be due the drawer when the draft came to maturity. And I will not underrate the intelligence of the bank so much as to suppose that, when they discounted the draft, they did not know that the department could not lawfully pay it if the amount should not be due to Mr. Porter, or that the postmaster could or ought to pay away the money of the public, without an equivalent in authorised public services. They knew, therefore, that the acceptance was conditional in fact, though not in form, and incurred all the hazards of that condition. It may be alleged that they were

deceived by this acceptance. As to its legal obligation and effect, they were not deceived; as to the amount likely to be due to Mr. Porter, when the drafts should come to maturity, it is probable that they and Mr. Mason, the acceptor, were alike deceived. It is probable that he would not have put his acceptance upon it, and the bank would not have discounted it, if they had not supposed the amount would be due. But that was one of the hazards of the legal condition attaching to the acceptance, and constitutes no ground of claim on the department. Nor can they justly charge Mr. Mason with any moral delinquency in being instrumental in deceiving them, for, undoubtedly, he was himself deceived.

The mortification which an honorable man feels under such circumstances, however severe, cannot jnstify him, as a public officer, in violating the law, and paying away the public money where nothing is due.

On these grounds, it is maintained that your bank has no claim on the department for the amount of Mr. Porter's draft, either in law or equity.

The acceptances given by myself in favor of Mr. Reeside, four in number, amounting, with interest, to $14,363, now charged up against the account of the Treasurer, are conditioned on their face. They are in the following words, viz: "Accepted on condition that his contract be complied with." I disapproved the practice of giving acceptances in any shape, because I believed they were instrumental in deceiving the public. Nor did I give them, except to renew acceptances before issued by authority of my predecessor, and thus save the credit of contractors until their accruing pay would be sufficient to meet them. To protect the holders, as far as possible, I exacted a pledge from the contractors to take them up themselves, if their accruing pay should not be sufficient when payment should be required; and to protect myself from the imputation of aiding to deceive any one, I changed the form of acceptances before in use, and adopted that which you hold on Mr. Reeside's drafts. That change was made for the purpose of embracing, not only the transportation of the mails, as stipulated in the contracts, but their complete performance in every part and parcel, so that the holders of the drafts should not acquire the semblance of a claim on the department, so long as the contractor should be any way in default. The following provisions are found in Mr. Reeside's contract, and in the bonds annexed, signed by him and his securities, viz: "The whole forfeiture and penalties to be incurred in the course of any one trip shall not exceed the sum specified in the third article, (differing in different contracts,) which the contractor hereby binds himself to pay to the Postmaster General." The condition of the bonds annexed is as follows, viz: "Now if the said James Reeside shall well and truly perform the covenants in the said indenture, expressed on his part to be performed, *and repay all advances that may be made*, then this bond is to be void," &c. It is too apparent to be controverted, that so long as there were any forfeitures not paid, or any advances not re-

funded, the contracts on Mr. Reeside *were not complied with*, and the acceptances referred to created no semblance of obligation. That the condition of the acceptances covers these provisions I cannot but know, because the form of words was devised by me *expressly for that purpose*, and to avoid promising to pay any thing to the order of contractors so long as any thing should be due from them to the department. Now, forfeitures had been incurred by Mr. Reeside which had not been paid, and advances made which had not been refunded, when these acceptances came to maturity, and therefore the Bank of the Metropolis, which had taken them subject to this condition, acquired no semblance of claim upon the department in either law or equity. Will the bank say that they did not know the stipulations of the contracts, and the extent of the condition? If so, it was their own fault. The means of information were within their reach; and their neglect to make inquiry cannot now be urged to strengthen any claim against the department.

It is sufficient for the department that the condition was not intended to deceive any one, and was so framed as not to deceive any one who might use due diligence to acquire information. Although the same condition is attached by law to Mr. Mason's acceptance of Mr. Porter's draft, there is this difference between them, that in Reeside's case the acceptances were so framed as to avoid the possibility of deception, if the bank had taken the trouble to ascertain what the conditions of Mr. Reeside's contracts were, and the state of his account. The bank would have been informed, however, that the department expected Mr. Reeside to renew his drafts until the accumulation of his current pay would be sufficient to meet them, and had his pledge to take them up himself, if earlier payment should be required—a pledge which he afterwards wholly disregarded.

The charge of E. F. Brown's over draft of $611 52, against the Treasurer's deposite, for the use of this department, excites still more surprise. Mr. Brown was appointed, by my predecessor, agent to disburse the contingent and certain other appropriations for putting up blanks and paying laborers. No sooner was the money appropriated for these purposes placed to his credit in your bank, than he commenced checking it out, to pay his private debts. I think it was in June, 1835, he reported to me that the contingent appropriation was exhausted; and it was suggested that, with my approbation, the bank might suffer him to overdraw, and thus accommodate the department. I peremptorily refused to sanction that course, and suggested that, if the bank was willing to advance funds, it had better be done upon accounts allowed by me than upon the over drafts of the agent. The course I suggested was pursued; and when the next appropriations were made, the account of the bank was settled, and $6,156 28 paid over to it for allowed accounts, upon which it had advanced the money. So far from being approved by me, the over draft of the agent was not even known until he had left the city and resigned; and now you stop the money of the department to reimburse yourselves for the consequences of your own misplaced

confidence in a faithless public agent. It is enough tor the Government to lose its own funds which he drew from your bank for his private use; but for the advances which you made to him without its sanction or knowledge, you can look to nobody but himself.

Perhaps you are not aware that the funds disbursed by Mr. Brown were not funds of the Post Office Department, bnt appropriations from the Treasury. His accounts were settled by the First Auditor and First Comptroller of the Treasury, and the Postmaster General had no authority whatsoever to allow any final credit on them, nor has the auditor for this department now. In attempting to compel a credit for the sum claimed against the funds of the Post Office Department, you therefore not only ask me to do what in no case I have the power to do, but insist upon a violation of the law by an application of the funds of the department to other purposes than those to which they are appropriated. I am sure that, on reflection, this claim will be entirely abandoned.

It is painful for me to notice another feature of this transaction. When your bank, following so many illustrious examples, stopped payment, with a large deposite of this department on hand, you are aware that I determined to sustain the credit of the Post Office Department at all hazards. Having perfect faith in the honor of your bank, notwithstanding its suspension, I made an arrangement to place in it a special deposite of specie, the more readily to accomplish the difficult task I had undertaken, and from time to time transferred to you, in specie, funds, $40,176 99. To my astonishment, I now perceive that you have not only stopped the entire remainder of the general deposite on account of this department, but have transferred into your general account $5,984 99 of this specie deposite, and appropriated it to the payment of these claims. This was taken from an account rendered by the bank itself, which turned out to be erroneous. The bank admits the amount of special deposites seized to have been over $1,000.

I did not complain that you paid off the original deposite in depreciated notes, to those who were willing to receive them, but I was not prepared for this proceeding. I could not believe that your bank would seize on a special deposite of specie under any circumstances whatsoever, and much less to pay a claim never presented to the proper officer for settlement, the legality and justice of which ought to be considered at least doubtful. What faith can be reposed in banks hereafter, either as general or special depositories, if not only legal obligations, but all honorable understandings, are thus readily to be disregarded? I cannot do the managers of your bank the injustice to suppose that they have adverted to this feature of the transaction. It cannot be possible that, while they refuse gold and silver to the holders of their own unquestioned obligations, or under any other circumstances, they would feel themselves at liberty to detain specie placed in their keeping as a special deposite.

It is now upwards of two years since these acceptances were pro-

tested. To the President of your bank, I verbally explained the reasons why they could not be paid until the advances made to the contractors had been refunded, and the pay due to them should so accumulate as to be sufficient for the purpose. Your bank held, at one time, about $70,000 of such paper. By stopping moneys becoming due to contractors, the department has paid upwards of $40,000 of it. Not a dollar has been paid to Mr. Reeside, and, had he not unexpectedly abandoned the mail service, his drafts would also have been paid. No encouragement has been given, from the beginning, to expect that a sufficient sum could ever be stopped from Mr. Porter to pay his drafts; and so entirely was it lost sight of, that a payment of about $, (see postscript,) was made to him, which would have been stopped, had the department known or recollected that the bank still held it up with any hope of obtaining payment through its instrumentality. When the fact was found to be otherwise, this payment was regretted, because it gave your bank a plausible, if not just, occasion to complain of the department.

Indeed, it was not supposed that your bank held these papers without having recourse upon the drawers for any other purpose than to procure the aid of the department in effecting the collection of the money without resort to suits at law. This impression was confirmed by the readiness with which you closed the account of the Post Office Department, after the passage of the act of 1836, by the transfer of upwards of $30,000, being the whole amount standing to its credit into the Treasury of the United States. Since that time, many tens of thousands have been placed to the Treasurer's account, and drawn from it, without the slightest intimation from the bank, or the slightest suspicion, on my part, that these acceptances were considered chargeable, or would be charged, to the department in any shape. Why, it may be asked, were they suffered to slumber so long? Why were the intentions of the bank so long suspended and concealed? The bank will readily perceive what imputations upon its motives these circumstances are, in their nature, calculated to elicit, however unjustly.

To your proposition for an amicable suit, I cannot accede. It would imply an acquiescence, on my part, in the doctrine that the circuit court for the District of Columbia possesses, on this subject, the powers of the Auditor for the Post Office Department, First Comptroller of the Treasury, Postmaster General, Treasurer of the United States, President, and both houses of Congress,—a doctrine, I think, the bank itself is not prepared to maintain, with whatever ingenuity it may be presented by their "able counsel." The only tribunal which can rightfully allow the claim of your bank, is the Congress of the United States. By their authority, and that only, can the moneys claimed be paid to you, and charged to the drawers of the papers you hold. If a memorial had been presented to that body, instead of a resort to the arbitrary arrest of the funds of the department, it would have encountered no opposition from me, beyond that which official duty might have required, nor will it here-

after, if the bank shall deem it expedient to abandon its present position and resort to that source.

In conclusion, I take leave to assure the president, directors and officers of your bank, that I intend nothing personally unkind or disrespectful in any thing which this letter contains; and if there be any expression in it which may seem unnecessarily pointed or severe, it has been employed, not with the view of casting imputations or giving offence, but solely to arrest attention, and make the positions assumed by me distinctly understood.

With great respect, your obedient servant,

AMOS KENDALL.

GEORGE THOMAS, Esq.,
Cashier Bank of Metropolis.

P. S.—Upon investigation, it is found that the supposed payment to Porter was made upon an acceptance of prior date to that held by the Bank of the Metropolis, which relieves the department from all grounds of imputation.

F.—Letter F.

BANK OF THE METROPOLIS,
January 11, 1839.

SIR: Your favor of the 14th November last was received on the 16th. Owing to the absence of the president of this institution, whom, on this subject, it became my duty to consult, and my having been, as well as himself, unusually occupied, since his return, by several engrossing matters, I have not been able sooner to reply as particularly to it as the variety and importance of its contents required.

Introductory to your elaborate discussion, are courteous and responding declarations and expressions, (free from personal unfriendliness or excitement,) with which you mean to conduct your part of our official communications, and, at the same time, sentiments of personal respect for the managers and officers of our institution: all of which call for a repetition of our previous similar assurances.

And, at the same time, while we are disappointed in our fond expectation that our proposal for an amicable adjustment would have been promptly accepted by you, we assure you that your confidence, "inspired by the respect you entertain for our good intentions, and purpose to obey the laws of the land in the management of our bank, as well as in our private walks; that the moment we are apprized of the errors of fact and law, on which our proceedings have been heretofore founded, we will recede from the ground we now occupy," is well placed. No pertinacity in adhering to tenets or decisions from selfish motives, merely because they are our own, will prevent us from acknowledging and correcting our errors. Self-respect, as well as that due to the head of a department of the Gov-

ernment, both personally and officially, added to a strong sense of justice, will insure this step. At the same time, it is our duty to declare that the contingency of our being apprized that our "proceedings are founded on errors of fact and law" had not occurred; but, on the contrary, all our further reflections and consideration strengthen our conviction of the truth of both our facts and law; to the latter I shall turn my attention, particularly, presently.

Without wishing to disturb your apparent satisfaction at your supposed triumph by the fluent eloquence of your letter, I must be permitted to say, that I find throughout, besides egregious errors, both of law and fact, only that plausible and skilful ingenuity which a self-complacency readily and innocently mistakes for argument and sound reasoning. Some of this, besides being employed in the present case, may, perhaps, also, have been deemed useful and expedient in another eager kindred attempt to propagate or inculcate doctrines or theories which, in their practical operation, are calculated to support or guard, what you consider, the public interest, that is, the narrow interest of the Government, as contradistinguished from that of the people or the citizen; but of the success of which, so far, you have no reason to boast. Without, however, obtruding my humble opinion as to the general character of those doctrines, I shall endeavor to show, and I still hope to your conviction, their fallacy as applicable to our particular case, commencing by stating that case as succinctly as practicable.

A draft on the Postmaster General, by Edwin Porter, a mail contractor, dated the 14th of April, 1835, for $10,000, payable on the 16th of July, 1835, was unconditionally accepted by the officer or agent of the department, and admittedly designated and appointed for such purposes. This draft was early presented at the department, and actually noted by it, as appears by an entry there made on its face. At maturity, it was presented for payment; payment refused, and then protested.

2. A similar draft, by James Reeside, also a mail-contractor, dated October 17th, 1835, for $4,500, payable 20th January, 1836, was *conditionally* accepted by the Postmaster General, "A. Kendall;" that is, "*provided* he, Reeside, complies with his contracts," was, at maturity, presented for payment, and refused.

3. A similar draft, dated 20th of October, 1835, for $1,000, payable the 21st of January, 1836, similarly accepted, presented, and refused.

4. A similar draft, dated the 23d of October, 1835, for $4,500, payable the 24th of January, 1836, similarly accepted, presented, and refused.

5. A similar draft, dated the 28th of October, 1835, for $3,000, payable the 29th of January, 1836, similarly accepted, presented, and refused.

The drafts were all based and drawn upon existing contracts with your department, for the performance of important public services. It was to facilitate those services, that the loan upon the

acceptances of the drafts was applied for and made. It was unquestionably, if not avowedly, to promote that accommodation at bank to the drawers that the acceptances were made. With the most cordial disposition to aid, with our means, operations of the Government so interesting and valuable, and which aid, we were well assured in more than one way, was important and desirable to both the department and the contractors, at a time when the required means were not so easy of access as they might sometimes have been; honorably assured, as we were at the same time, from a quarter entitled to your respect and confidence, of the ample means and undoubted receipts of the contractors from the department, we negotiated the paper, and advanced the money solely on the credit and faith of the department. It was never imagined that, under any circumstances, except that of a palpable and admitted subsequent failure of the contractor in the cases of the conditional acceptances, we were ever to resort to them at a distance, exposed to all the difficulties, expense, loss, and hazard incident to distant litigations and collections; and even in such a possible case, we confidently calculated on co-operation from the department. We were at the time of presentation and refusal, and afterwards, repeatedly encouraged to expect, and even assured that funds would soon be in hand to meet the drafts. Indeed, in most of the instances, if not all, honorable efforts were made, particularly by a friend of yours, to obtain a renewal of the paper for a further term, upon the very ground, that the concerns of the contracts were not finally settled, but soon would be so; and then would afford abundant means for payment, &c. In this condition those transactions continued lying over, day after day, month after month, and year after year; the Post Office Department under protest on our books, to the surprise and disappointment at least of its friends, whatever it might have been to others. After many inquiries from, and expressions of solicitude to, a source not far distant from him, our anxiety and sense of injury produced, early in February, 1836, a formal application to the head of the department himself. Intimating generally, without the least particular explanation, that there were no funds in your hands applicable to those claims, you proposed that we should prosecute the drawers. We remonstrated against this course, and in declining it, (stating briefly our reasons,) you *was* expressly and explicitly informed that the department alone always had been, and still was, looked to for payment, and that we thought reason and justice required it at your hands. You ended the conference by requesting the president of this institution to write to you on the subject, assuring him that you would promptly and particularly answer him in writing. He accordingly soon afterwards wrote to you, transmitting you, at the same time, a distinct and detailed tabular statement of those, among other cases, with their respective facts and circumstances. After waiting long and patiently for the promised answer, you were personally reminded of the subject, and of the unanswered communication, and again personally and expressly informed that to

you or your department alone we looked for payment, and that we hoped soon to receive it, &c. It is recollected that, without saying any thing definite or particular as to our claims, you then transiently and slightly inquired whether we had proceeded against the drawers, and *was* again told that we had not, and did not mean to. Still we were not favored with a written answer. At length, on the 21st July, 1836, another letter was written you by our president, reminding you of the invited letter of the February previous, and your assurance of a prompt reply—which met with the same fate as the former. In the mean time, we heard much, from sources respectable, at least, if not authentic, of the fulfilment of the contractors, on the one hand, and of your new principles and rules of liquidation and settlement, and of the consequent failure of the contractors, on the other hand. Understanding, at the same time, that the proceeds of contracts considered as justly pledged to us were about to be diverted, and applied, retrospectively, to other purposes, (to refund advances, extra allowances, &c., which you supposed you discovered had long before been improperly made by your predecessor,) we, at length, despairing of such relief or adjustment as we were entitled to, resorted to the legitimate act which is the immediate subject of our present correspondence.

I have given the history of these transactions between us, which, although you may think it prolix, I consider just and proper to correct a misunderstanding and view of a difference much regretted. All the material facts I stand ready to prove.

Now, sir, after all this, and your manifest indifference about these drafts and acceptances, whilst they had been lying under protest so long a time, and the business, from the general circumstances of the bank, as well as those of the particular cases, was daily becoming more interesting and urgent—after all this, I say, it was scarcely expected that you would have been surprised at our, at length, charging up the amount to what is, in substance and reality, your official account; and it is regretted that, after having been informed of our intention to do so, and respectfully requested not to draw on us beyond the balance that would thereafter remain at your credit, until the case should have been submitted to the President of the United States, (of our determination to do which we advised you,) you, notwithstanding, drew beyond that sum, and directed protest for non-payment.

In your first letter to us, dated the 19th October last, in answer to mine of the 11th of the same month, you say, "that accepted bills of this department, held by your bank, will be cheerfully and promptly paid whenever anything shall become due to the drawers, or whenever the department shall be required to pay them by act of Congress, and appropriation made therefor." We will not accuse or suspect you of evasion, but this assurance is of so vague and indefinite a character (still reserving to yourself, solely, the decision of law and fact, as to the occurrence of the concluding contingency, and not even intimating any encouragement as to your friendly agency or

co-operation in endeavoring to obtain an appropriation) that it would not have justified us in abandoning our ground.

The first point you make, after reciting what you consider the grounds on which we rest our claim, is, "that as the Constitution declares that no money shall be drawn out of the Treasury, except in pursuance of appropriations made by law, and as Congress has made no appropriation to pay debts created by the bare acceptances of the Postmaster General, it appeared to me (you) extraordinary that the bank should have assumed the power of Congress to make an appropriation, and take money out of the treasury to pay its impalpable violation of that provision." Now did it not occur to you that, in denying the right to pay money except under appropriation by law, and denying at the same time the fact of such appropriation to pay debts created by the mere acceptance of the Postmaster General, you also deny his right to make acceptances? You knew, then, that you had no right to pay, and still you did accept! Is this possible? I hope not. Can you escape from such an awkward predicament by saying that you intended, from the commencement, at maturity to have driven the holders to Congress for an appropriation, and thus convict yourself of a want of candor, if not of an effort to overreach? For, according to this theory, not even money in your hands from the proceeds of contracts was applicable to the payment of your acceptances. Although afterwards, when it suits you, you admit that from such a fund the acceptances might have been paid! Here is a strange assemblage of false doctrine and inconsistencies, and such as certainly give neither strength nor honor to your case. From its incipiency, throughout the negotiation for the loan, no doubt was suggested by you upon this subject, no diffidence expressed or intimated! Your name was offered and received; the money loaned on the faith and credit of the department. Surely you did not mean to assume a personal liability, which you are well aware would have been the case, if you had no official authority.

But let us dwell a little longer on this part of the subject. When you talk as fluently as you do about the general principle of law, and apply to us the maxim that ignorance of it does not excuse the breach of it, or exonerate from its paramount obligations and penalties, is it not obvious to you that, although that general abstract principle is necessary, at least in criminal law, to the support of the social and political system, yet, when applied to many cases of daily practical business occurrence, it becomes a sophism better calculated to countenance insidious craft in its practices upon ingenuous confidence, than in its rigorous application to promote the just and wholesome purposes of society? Indeed, to suppose you serious in the application of it in this case, must be unjust both to your public and private character. Without appealing to the magnanimity, or even the liberality of a high public functionary, I ask whether, in a case where such an acceptor (say one of the cabinet ministers of the President of the United States) *professed* to be authorised, and where an innocent stranger presuming that the laws were well understood

and administered by him with whom he was dealing, because it was the special duty of the officer so to understand and administer them, (he being selected for his competency for these purposes,) such an innocent party should, for a *valuable consideration*, receive his acceptance for re-payment of a loan made expressly for the purpose of facilitating and promoting important public services, in which the acceptor, at the time, felt more than ordinary interest, and, by the use of his name and credit, encouraged and invited the transaction: I ask whether the party, so confiding, is afterwards to be repelled, in his application for re-payment, with the rebuke that he knew, because he ought to have known at the time, that the whole transaction on the part of the functionary was illegal, and that, therefore, no obligation to pay is created by the acceptance? Can it be required that a private individual should go behind the functionary, pore over and critically examine every law relating to the powers and duties of such a functionary, before he ventures to receive his official engagement or responsibility, given, too, according to long-established and notorious usage? It is a proposition so monstrous, baseless, and preposterous, that I will not disgust or weary either you or myself by tracing it to all its inevitably evil results.

But you are wholly in error when you undertake to prove that the money standing on the books of the bank substantially to the credit, or for the service of the Post Office Department, is money in the Treasury of the United States, generally, and, consequently, subject only to appropriation by Congress; that inasmuch as Congress has made no appropriation "to pay debts created by the bare acceptance of the Postmaster General," the act of bank, in charging up these acceptances, is an usurpation of legislative power.

1. By law, it is wholly immaterial, as regards the relative rights of the parties, whether, in the premises you assume, you be right or wrong. If the money on deposite belong to the United States, the money charged up was also due *from* them. In all these transactions, the department, and each of its officers, is a mere agent; and any suit brought to recover this claim from the bank must be brought for the benefit of the Government, and under the act of the 2d July, 1836, in the name of the United States. In any suit thus instituted, the party has a clear right, expressly recognized by statute, and fully expounded by the Supreme Court, to off-set any equitable claim against the United States. The bank may off-set, and, consequently, retain a claim of this character. As to the equity of our claim, we trust enough has already been, and will be, said. I give here the law.

2. You are wrong, also, in the assumption of your premises. To all substantial purposes, this money was in the hands of your department. By the act of 1836, which you consider as a sort of text (partially selecting from it and applying as you please,) for commentary, the sum of $3,150,000 is, in fact, appropriated for the service of the Post Office Department; and this is the legal form of such appropriation. Money thus appropriated, in general terms, is, by the

terms of that act, subjected to the control and direction of the head of the department; and had he directed, specifically, the payment of these acceptances, they would have been paid. The act of the bank is not, therefore, in any sense, a usurpation of the power of Congress; it is only doing itself, what, by law, the Postmaster General was competent to do, and what of right he ought to have done.

3. The 15th section, even if it admitted of your construction and application, which it clearly does not, as will be shown, would demonstrate the propriety and legality of the act of the bank; for, recognizing the right to off-set claims which have been rejected by the auditor of the department, it shows that the retaining money, on the ground that such claims exist, is a lawful act.

4. You insist that, inasmuch as Congress has made no appropriation to pay debts created by your bare acceptance, our act is illegal. Now, you can scarcely be ignorant, either, that Congress does not make those special appropriations, but that they are made in the general terms above quoted; and that by another provision of the same act of 1836, the disbursement is subject to your control, and that, consequently, no such specific appropriation is necessary or material; or, that the debt in question (as respects the accepted cases) is not created by the bare acceptance. In law, and in truth, the acceptance is an acknowledgment so far as regards the holder of a draft, that the acceptor does owe, or will owe, the amount to the drawer, and agrees to appropriate, by the request of the drawer, that debt to the drawer or holders. The assumption is utterly without foundation that the debt originated in the act of acceptance. If the acceptance be unconditional, it is *per se* proof conclusive that such indebtedness exists; if conditional, then, if such condition be performed, it becomes equally conclusive.

The whole difference between us, we think, stripped of the drapery thrown around it, lies within narrow limits. The first item of claim is the unconditional acceptance of Porter's draft. It is impossible to make the case stronger by argument; and, averse from superfluous discussion, I might safely pass it by without a single remark, did not the manner of your treating it seem to require a transient notice. Your proposition (and a bold one it is) is, that, although this acceptance is absolute and unconditional in terms, it was, nevertheless, conditional in law, and the bank knew it when they gave value for it. As to our principles of law, we appear to be antipodal. If I were even to say that, on a liberal construction, a conditional acceptance is unconditional in effect, you would find, on a re-perusal of your books and recent adjudications, that I would be nearer the truth than yourself. As to our knowledge, which you assert, it is not a fact. We did not know that the draft was conditional, but knew the contrary. Here, to sustain yourself, you assume your own law, and then bring up the stale sophism before noticed, to prove that we knew it, because we ought to have known it. By your succeeding pages in support of this doctrine, a strong impression is made, no doubt erroneously, of an avowed disregard by the

department of all moral as well as legal obligation. I will venture to say that no man of business, not an intelligent and honorable man in the community, will be otherwise affected by your treatment of the subject; and therefore I sincerely regret you had employed your talents in support of principles that, whilst they must be universally shocking to others, cannot accord with your own views, after the matter shall have been more maturely considered and digested. Is it possible that you can think the holder of an unconditionally accepted bill, for value advanced upon the credit of the acceptor, is to depend for payment upon the contingency of the acceptor's having at maturity in his hands the required amount of funds belonging to the drawer? Why, the credit system, which forms so large a part of the whole business of the country, would thus receive a wound, which, if not at once fatal to it, would paralyze and stagnate it to a probably irrecoverable degree. Do you mean, in effect, to extinguish all confidence between man and man in a commercial community? Do you require of the receiver, or holder, for valuable consideration, of an accepted draft, the impracticable knowledge of the fact that the acceptor will have funds of the drawer at maturity, whether the draft was drawn against means, either in presenti or in futuro, in the drawers' and acceptors' hands, or nakedly, upon his friendship or disposition to serve his friend, the drawer, by the loan of his name and credit? Or do you mean to contend for a principle of action between an official agent and a private individual, different from that between such individuals?

Here, after settling in our minds, at least, the general questions of law and expediency upon this point, we are, irresistibly, again turned towards the moral aspect of the case, by your positive declaration that "both the legality and justice of our claim against the department are wholly denied."

It would be painful for me to imagine that a system of deception or imposition upon the confiding and unsuspicious creditor, (for to this end your doctrine would lead,) is to be practised or countenanced by the Government or its officers. Apparently alarmed even at your own doctrine, as if apprehending the sentiment of every honest mind, you say, "it may be alleged that the bank were deceived by this acceptance." As to its legal obligation and effect, they were not deceived. You talk of our being justly subject to the hazard of the legal condition of an unconditional acceptance, &c. There is a temerity in all this, which certainly would not command respect, if it were to proceed from any other source. If the principle you now contend for was recognized at the origin of this transaction (and so you would now seem to claim) at the department, we were, indeed, grossly deceived, and by those who ought to have undeceived us. But there was then no such doctrine extant; no such principle practiced upon; and, therefore, we were not then deceived. But are we now to be disappointed, at least, if not deceived, by the interposition of a principle hostile to the fairness of business, and fortified by all the authority of office and the ingenuity and subtlety of incumbents?

One word more on this point: If an unconditional and a conditional acceptance are necessarily the same as you held, why the difference in the forms of your acceptances? You admit, yourself, that your conditional acceptances were, in form, adapted to particular purposes you had then in view. The form, then, seems to have been thought material. Upon the whole, it is clear that the idea you are now putting forth is one of modern origin; and, allowing that the department has been sometimes right, and at other times wrong, that fact, without exempting it from the consequences of its own errors, goes far towards justifying, or, at all events, excusing, our ignorance of its laws, rights, and duties, in strangers dealing with it, as well as equitably to exempt them from injurious consequences.

2. In the cases of Reeside, the acceptance being conditional, the question is equally simple, waiving, on our part, the strict principle of law. Has the condition, in fact, been complied with? that is, have the contracts, on which those drafts and acceptances were founded, been fulfilled? This is the point, I admit, on which the cases turn. To say the least, the onus of proving the non-performance of the condition is on the acceptor, in order to defend himself. You are, in those cases, in possession of all the facts and means in existence for your defence: we are strangers to them, whether favorable or unfavorable. In short, notwithstanding this position in law and reason, we will waive this advantage and prove the compliance, and that thus your obligation is perfect. We are well assured of the fact by positive information, (some of which, at least, even you will respect,) as well as by that of a violently presumptive character. We would have been glad if, in your letter, you had gone somewhat into detail on particulars on this point, instead of meeting us with vague general assurances and declarations. Without wishing to pry into official mysteries, we think the nature and merits of our case entitle us to something explanatory and specific from you, as to the application of the means which you knew were calculated on for our re-payment. But, I repeat, we will prove the compliance without the aid of those equitable and constructive reliances on your duty and aid in this respect, which would fully sustain us without that liberal and indulgent consideration to which, even in the absence of strict legal right, we considered ourselves entitled from you. A part of my remarks in the case of Porter's draft, particularly relating to the expediency and morality of the ground you take, apply equally to those now under consideration, and, therefore, I shall not repeat them.

You say that, "to protect the holders as far as possible, you exacted a pledge from the contractors to take up the drafts, if their accruing pay should not be sufficient when payment should be required!" Are you not mistaken as to your *motive* for taking this pledge? Was it not for your own security, knowing your own liability? At all events, as you are an astute lawyer, I presume this pledge is a real one, containing within itself an obligation for its redemption. Why not, then, carry out your kind intention towards

the bank by compelling the redemption? Again: you hold Reeside's bonds for "compliance with his contract;" why suffer them patiently and passively to slumber, without using the means they furnish to enforce that compliance which you say is wanting, and thus to relieve the bank for which you say you were interested, you all the time detaining the funds professedly detained by us? With less imagination than yours, I might here inquire whether it does not strike you, as a lawyer, that even those laches might, between man and man, create a liability, if there were no other? Besides, how stands this matter in *pro conscientia?* I fear I was mistaken when I supposed the department felt some solicitude for our interest, more especially as you now calmly tell us that, if "the bank will recede from its present position, and apply to Congress for an appropriation, it will encounter no opposition from you beyond what official duty may require!" I presume you will dispense with any grateful acknowledgments from us for this proffered boon.

When you strive to evade the force of an unconditional acceptance, you say it was necessarily conditional, and resort, for proof, to arguments unintelligible and repulsive to ninety-nine hundredths of the community—much more so to the honest creditor whose money has been extracted from him under pretences effectually false; and when you intend to absorb all those resources which were particularly and confidently relied on for re-payment, you say the change in the *form* of the acceptance was necessary to protect yourself from the imputation of aiding to deceive any one, "and to prevent the semblance of a claim," &c.

You say, "if the bank had taken the trouble to ascertain what the condition of Reeside's contracts was, and the state of his accounts, the possibility of deception would have been prevented; the means of information were within their reach, and their own neglect cannot now be urged to strengthen their claim," &c. Here, besides meeting us with a convenient dogma, you make an ostentatious parade of our facilities and opportunities for obtaining information, &c. Is it possible that you are serious when you use this omission against us? Pray, let me ask, even if you had been so kind as to advise or intimate those means and this precaution at the time, of what earthly use would a view of the contracts have been to us, whilst you continued, in an exparte manner, to construe and to have them executed in all their details by your own arbitrary will? And further, as to the state of the accounts, do you mean that we were to have undertaken a tour of inspection through the country to examine where and what failures and penalties had occurred, what was the value of extra services by you considered as previously overpaid, &c., and thus to liquidate the balance, and thereby test our security? We wish it to be kept in mind that, during the whole of these transactions, a high and honorable officer of your department, who is now its auditor, was present at our board, advocating and urging the accommodations, and gave the most satisfactory opinions and assurances of security and payment.

Without considering it important, it would be satisfactory to us to know what was the state of Reeside's accounts at the time of the acceptances, according to the notions and claims of the one and the other party.

You take occasion to observe that you "disapprove of giving acceptances, in any shape, because you believe they are instrumental in deceiving the public, nor did you give them except to renew," &c. Then, it seems, there was nothing illegal in them, but they deceived, &c. And do you mean to assert that your acceptances in Reeside's case were renewals only, or to contend that such a fact would weaken the legal obligation? If you do, you are mistaken But, you say if we had examined the contracts and accounts, the possibility of deception would have been prevented, &c. You admit there has been deception somewhere. You must admit that your signature was given for the purpose of adding credit to the drafts, and to the application for the loans; then it seems, also, that a knowledge of the state of the contracts and accounts would, or might, have prevented the loan, and, of course, the failure and deception. You *was* in possession of that knowledge, not only because "you ought to have been," but in fact; and you having that knowledge, and, of course, the power to put us on our guard, was so far from doing it, that you even co-operated, by the use of your name, in encouraging the loan. We might, then, ask you, allowing full force to your reliance on the effect of the verbal condition of your acceptance, to point out where the deception arose. There is another view of this subject not uninteresting.

The money was obtained from us late in October, 1835. The contracts were then about expiring, on 31st December ensuing. The failures, defalcations, forfeitures, and illegal extra allowances, &c., if any, had doubtless occurred previous to that time, and you knew what they were. Did you then aid Reeside with the loan of your official signature to obtain this money to repay or indemnify yourself for those failures, illegal advances, &c., or for the purpose of carrying on the public business under your supervision for the remainder of his contract term, his other resources having been, or being about to be, exhausted by your absorbing claims before alluded to? One or the other must have been the case. And do you not feel some compunction in now refusing to pay us that loan?

And here it may be appropriately observed, as you will see below, that the very law which you emphatically quote against us, makes it your *duty to prosecute, by action at law*, for the recovery back of all previous illegal payments and allowances, thus pointing out a specific mode of redress without interfering with the means intended for us, and at the same time recognizing the supremacy and jurisdiction of that very tribunal to which we invite a reference; you will not here, I presume, plead the right of retainer, because you would save us much of the trouble you seem disposed to give us.

The case of E. F. Brown, inadvertently, (probably from its minor importance and difference In character) has, so far, escaped me.

Your statement of the material facts in this case is wholly incorrect. They are these:

He was the authorised agent of your department to disburse its contingent fund. On the 30th April, 1835, he deposited in the bank to his credit, as such, $7,070 34; and, in that character, he drew out of the bank, at different times, up to the 7th July, 1835, the sum of $3,076 97. For reasons known to the department, the bank was then instructed thereafter to pay no check of the agent, unless it should be approved by Robert Johnson, the accountant of the department. Conformably with that instruction, the bank continued to pay the agent's approved checks up to the 14th May, 1836, when they amounted to $13,838 14. In the meantime, however, (2d December, 1835,) you informed me, by letter, that the contingent fund of your department was exhausted, and requested that such bills as shall have been allowed by Robert Johnston, against the department, might be paid. When Congress made the appropriation, the department settled up the over draft, except $611 52, which, it was alleged, Brown had used for his own purposes, and that the bank must look to him for it. No check of Brown's, unapproved by Johnston, was ever paid after we were cautioned by you; and, of course, none beyond the $3,076 97. It, then, must be a part of this sum, put by you under his (Brown's) discretion and fidelity, that you say he misapplied, and we ought to lose!

In vain was it urged by us that Brown had never overdrawn the account, his unendorsed or unapproved checks, in their amounts, being within the limits of the $3,076 97, and that the overdraft was upon the authorised checks of the department.

In this condition the account remained until the bank was required to pay up its debt to the department, when I charged it to the money of the department on deposite in this bank.

Here you have the true case. Is it possible to strengthen it? I will not attempt it for fear of weakening it.

You say Brown was "a faithless public agent." Be it so, he was your recognized, authorised, and accredited agent; and who was responsible for his fidelity? If there were any misapplication of your funds, it was before we were cautioned by you in relation to him, and whilst he had your official sanction. We boast no merit for accommodating you with funds, of which you were destitute for public purposes: all we claimed was ultimate re-payment. And no candid, disinterested man, acquainted with the principles of law, justice, usage, and courtesy, will be at a loss to answer a question justified by this unexampled case, viz: Who was most "faithless"—Brown to the department, or the department to the bank, in case it persists in its present apparent purpose?

In this case, again, you descend to the subterfuge that the funds disbursed by Brown were not funds of your department, but of the Treasury; and that neither you, or your Auditor, have the power to allow any final credit in them. Again: you have power to contract, but not to pay, a debt!

The substance of your second letter, dated ——, consists of an inquiry, by what authority we "have taken from the Treasury funds placed by it with us, for the use of your department," to pay the acceptances, &c. From the origin of our business with the Post Office Department, we have, of course, had a running account with it, nominally, as well as really. All payments and deposites to and for it, by whomsoever made, have been immediately credited in that account; and, on the contrary, all payments made by us, to or for it, have been entered on the debit side. Payment or deposite thus made and credited, cannot, thereafter, be re-drawn, or otherwise applied, by the payer or depositor. Your bank-book exhibits the form of this account, which, though of late somewhat nominally varied, is substantially the same as heretofore, because no other than the Postmaster General has a right to draw, or does draw, for any thing in it; that is, he only has the legal right to apply, by warrant, to the Treasurer for this money, or any part of it, and it is the Treasurer's duty to sanction, by his check, that warrant; without which warrant, the Treasurer cannot reach the money. This change of form, (merely checking your draft or warrant by the Treasurer, without giving him, independently, the right to draw or check,) was, it seems, thought expedient as between the two departments, in consequence of some previous supposed mal-administration or irregularity, by some one or more of your predecessors, or for greater security. The form, therefore, does not really vary the account; and we are willing to believe that, even if it were practicable, you would not shelter yourself behind a mere form to defeat a substantially honest claim against him. This is, indeed, common-place matter, but its introduction is required to correct an error into which you seem to have, inadvertently, fallen. It follows, that your language, as applied to the substance, and not the form of the account, is not appropriate or correct, when you say, we "have taken from the Treasury money placed by that department with us, for the use of the Post Office Department." We have not withdrawn or withheld money, as you contend, from the Treasury: it had passed out of the Treasury according to law, and could not be re-drawn by it, except by your authority and for your use. Every draft upon it was necessarily to emanate from you. The money was expressly for the use of your department, and to that use have we rightfully and legally applied so much of it as was due to us.

You say that, since the transfer of the amount standing to the credit of the Post Office Department into the Treasury of the United States, after the passage of the act of 1836, many tens of thousands had been placed to the credit of the Treasurer's account, and drawn from it without the slightest intimation from the bank, or the slightest suspicion on my (your) part that these acceptances were considered chargeable, or would be charged to the department in any shape. Why, it may be asked, were they suffered to slumber so long? Why were the intentions of the bank so long suspended and concealed? The bank will readily perceive what imputations upon

its motives these circumstances are calculated to elicit, however unjustly.

After observing that the Treasurer never attempted to re-draw one cent of the many tens of thousands thus placed with us, except as endorser on your original draft or warrant, I must add that it is truly painful to witness the total inattention, both as to fact and deduction, exhibited in this paragraph. I am disposed to be rather amused than otherwise with your facility of leaping over from assumed premises to favorite conclusions, so long as you do not manufacture or grossly pervert the material facts over which you are vaulting. I am still disposed to give you credit for official pertinacity and ingenuity; but this I cannot do, neither can I indulge in amusement, when you gravely employ, though probably inadvertently, gross misrepresentation of facts. Every material one in the above paragraph is incorrect, as may be seen in the true statements of the cases above given.

You will readily perceive what imputations upon the motives of the department this unfortunate habit of creating facts as the basis of its arguments "is calculated to elicit, however unjustly." Further: to be serious, does it not appear to you that the patient forbearance and slumbering suspense of the bank for so long a time, as you admit, is another proof of its friendly disposition, as well as of its reluctance to do itself justice, even after all its appeals to you proved unavailing? And do you see no merit in all this? But it would seem that, after all, when the bank, seeing that your means in its hands were rapidly diminishing, before it acted on the case, it ought, in your opinion, to have announced its intention to you! Most assuredly they ought not to have done so to a wary antagonist, whatever might have been proper in the present instance.

You insist upon it, that as by the act of 1836 an auditor is created, whose duty it is "to receive all accounts arising from the Post Office Department, or relating thereto, to audit and settle the same, and certify their balances to the Postmaster General;" and, "as no report of any balances due to your (our) bank on account of the claim in question had ever been made by him, and no such claim had ever been presented to him for settlement," and as we have thus failed "to take the first step under that act by which you could be authorised to make payment," &c., of course this omission is fatal to the claim. In the first place, you know that, on the repeated applications made to you on the subject of the acceptances, both before and after your new organization, you never intimated or suggested the propriety, much less the necessity, of an application to the Auditor. Indeed, the Auditor was to settle accounts: what subject or opportunity was there in our case for his appropriate agency? No matter of account, no contrary claims, or mutual covenants—every thing settled and specific. In short, when the obligation was consummated, and payment at maturity demanded, there was no Auditor. He was created long afterwards; and the paper has since been reposing in its original form under protest in our hands. Without the least detraction from the strength of our claim, we see in this pretence, besides

a want of that official candor and kindness, at least, to which we were entitled, a feeble attempt to shelter behind the forms of office the purpose of defeating a substantial and an honest claim.

But, more particularly as to the law of 1836, which you quote: You place upon its language a construction palpably erroneous, and then deduce conclusions not warranted even by your own premises. For instance, you advert to the 15th section, as providing "that no off-set can be allowed in any suit brought by your department, on account of the department, unless the claim offered in set-off shall have been presented to the Auditor, and by him disallowed." From this you infer that we have been guilty of omission in not "taking the first step to procure a settlement of our claim, or even to put it in an attitude to be set off in a court of justice." It is, in the first place, obvious that the section has no bearing upon the case, but is confined in its operations to postmasters and contractors; and secondly, that the party sued may present his claim, and have it disallowed, at any time before the trial of the suit.

After observing that the conclusions you draw from the act, and your constructions, are generally, if not uniformly, erroneous, it is sufficient here to repeat that the rights and obligations of the parties were all adjusted by the law as it stood previous to that act, inasmuch as all the acceptances are of prior date.

Again you say, "if you were to issue to us a direct order to pay moneys in our bank to any one, it would be perfectly illegal; and if we paid the money upon it, we could not obtain a credit in settlement of our account with the Treasurer." Such illegality must be a recent discovery; for you have in fact given us such order, even before there was an appropriation, and the validity of such payments has been recognized in the settlement of our accounts. But this is purely immaterial; no such question is presented in the case. The truth is, that, throughout this whole business, you at pleasure expand and contract your power and authority to suit your purposes. If you be so powerless as you at times represent, what have you to do with the proceedings of the bank at all? It is a matter between us and the Treasury, in which you cannot with propriety interfere. In point of fact, however, the money standing to the credit of the department, that is, for its service, is subject to your order and control.

You say, "the Bank of the United States, when it assumed the power to settle its own claim for damages on the noted protest of the Government bill of exchange, did not undertake to set it off against moneys in the Treasury, but upon its dividends accruing to the Government upon its stock." After barely observing that, in our case, there was no claim for damages to be settled, but every thing liquidated, closed and specific, do you really suppose, if the dividends had not been in hand, the Bank of the United States would have hesitated to retain other moneys of the Government? The one description of funds being ample, of course no other were required.

You say, "it is painful for me (you) to notice another feature in this transaction. When your bank, following so many illustrious examples, stopped payment, with a large deposite of this department on hand, you are aware that I determined to sustain the credit of the department at all hazards." Then, after stating that you had placed with us a large sum of specie, all of which was applied as desired, you add that, to your astonishment, you now perceive that we have appropriated $5,984 29 of this special specie deposite to the payment of these claims. After remarking that the law of retainer recognizes no difference between a special and a general deposite, (and most assuredly justice does not,) it is painful to be compelled again to advert to the habit which prevails throughout your letter of assuming facts to suit the purposes of your argument. You knew well—for it was communicated to you by Colonel Gardner, at our request, before you sent us your letter—that the statement which had been hastily and erroneously sent you of the balance of specie remaining with us was incorrect; and still, to give force to your reproach, you assume the larger sum, though erroneous. The fact is, there was not beyond about $1,000 of your specie deposite remaining with us; and if you will authorise any officer or agent of your department, in conjunction with me, to examine minutely the account, and liquidate the precise balance, we will with pleasure exchange the specie remaining with us for an equal amount of current paper. The fact of the retained funds being in specie was no consideration with us. We wanted an honest debt paid in current funds. You take occasion, also, to observe that you did not complain that we paid off your original deposite in depreciated notes, to those who were willing to receive them; but you *was* not prepared for this proceeding. "All that we paid out for you of the general deposite was such as we received from you; for you know of what that deposite consisted."

The ironical use of the terms "illustrious examples," as well as some other language in this paragraph, though professing to apply to other institutions, (many of whom, whilst yielding temporarily to a cruel necessity, in suspending specie payments, would not be guilty of such a voluntary denial of justice as you defend,) do not wholly exclude us from their sarcastic pungency.

Whilst we regret the use of such language, we feel it due to ourselves to repel the idea that we need an example to regulate our intrinsic principles of justice, and to add that still we are always especially predisposed to respect examples illustrated by the honorable and liberal conduct of exalted public functionaries, in their intercourse with those around them; whilst their acts of a different character give us proportionate pain and mortification, at least.

Without troubling either you or myself any further in this discussion, I shall conclude by expressing my regret that you decline my proposal for an amicable reference to the circuit court. The reasons you give for that declension, whilst they present a gross non sequitur, not expected from a sound logician, in effect, claim for yourself, in your transactions with individuals, (with whom reason,

law, and justice, require and dictate that, in those transactions, you are on a footing of equality,) an exemption from the obligation and liabilities reciprocal with those of the other party. As to the idea that such a reference would necessarily "imply an acquiescence, on your part, in the doctrines that the circuit court for this district possess, on this subject, the powers of Auditor for the Post Office Department, First Comptroller of the Treasury, Postmaster General, Treasurer of the United States, President, and both houses of Congress," it is scarcely more extravagantly preposterous than some of your others. Let me here again remind you, that your creed, on this point, as far as discussions and decisions in relation to it have hitherto gone, at your instance, has no success to boast of, however you may sneer at the "able counsel," whose advice we do not blush to avail ourselves of. Besides other considerations in this case, little did we expect, from an apostle of our general political creed, to be taught that the weak are to submit to the arbitrary will of the strong, without relief or redress from the judicial tribunals of a common country. Do not meet me here, I beg you, by the theory that, because the people have chosen the electors, and the latter, the President of the United States, and he has appointed you, that, therefore, the people decide against an individual antagonist claimant, when *you* do so. This would be a conclusion scarcely more extravagant than some of your others, having, perhaps, more of the form, though not of the solemnity, of syllogism about them. Even a legislative act is, in vain, invoked against you! By these circumstances, we are not less admonished to avail ourselves of our legitimate means to do ourselves justice. It is to an impartial tribunal, and to the people, in reality and immediate, that we appeal. A jury of the country will do justice to both of us. But you say no. You, *one* of the parties in the controversy, will decide for *both*. Does it not forcibly strike you that, even upon your own scheme, the whole machinery of your defence against the approaches of an honest creditor turns upon the single point of your own arbitrary will? We have your ipse dixit, only, that there are no funds in hand; that they are all legally absorbed by penalties, defalcations, re-payment of previous illegal extra allowances, and advances, &c.; all liquidated and pronounced by yourself against the solemn protestations and remonstrances of the other party to the contracts; and never have you condescended to furnish us an exhibition or statement of the items constituting the amount retained by you; and all this, contrary to the provisions of that law, which you emphatically quote against us, which expressly directs you, as before observed, *to recover back, by suit at law*, extra allowances illegally paid, &c.; and this, also, recognizes the principle and practice of decision by the ordinary tribunals of the land. We owe it to every individual in the community, as well as to ourselves, thus to appeal. We owe it to the sacred principles of law and justice, guaranteed to the people of the United States, to do so. When the humblest individuals in a community are acknowledgedly permitted to be actuated by such motives, in

testing standard questions of right, do not deny them, I pray you, to a pecuniary incorporation, which, though denounced and persecuted for a time, even by those from whom it expected and deserved a different treatment, might, by its tame submission to injustice and oppression, involve, in a similar fate, millions of others.

Repeating to you that, throughout the whole of this correspondence, I have addressed myself to you officially, and not personally, it will be unnecessary to say that not the least personal disrespect is intended; so far from it in our individual intercourse, either of business or otherwise, I have always been inspired by a strong sentiment of respect.

But, much as I have, in common with others, to approve, also, in the general administration of your department, I am compelled as decidedly to condemn your official conduct in the case now between us; and am, at the same time, very much consoled in the pain our difference gives me by the opinion of others who became acquainted with its merits.

By order of the board of directors.

I am, very respectfully, your most obedient servant,

GEO. THOMAS, *Cashier.*

Hon. AMOS KENDALL,
Postmaster General.

G.—Letter G.

POST OFFICE DEPARTMENT,
January 13, 1838.

SIR: I have received your letter of the 11th instant, in reply to mine of the 14th November last.

I do not feel called on, either by the public interest or self-respect, to make an extended rejoinder, nor shall I even express my regret that your bank has descended to take, under the mantle of its corporate character, two month's distillation of their counsel's concocted venom.

The lectures this paper reads me as law, morality, and honor, will have their appropriate weight; coming from an institution which daily sets the obligations of morality and law at defiance, and openly seizes a special deposite to meet a contested claim.

The department can bear the taunt of being under protest from a bank which pays its debts to no body, according to law, and has so often been protested on its own notes, payable on demand.

Its advocacy of the rights of the weak against the strong will have its due weight; coming from an institution which is strong enough to refuse to pay its debts, with perfect impunity, to the humblest citizen as well as the Government itself. Its imputations of deception, when none was practised or intended, comes with a becoming grace from a bank, which received a special deposite of specie, intrusted to its honor after it had stopped payment, then seized a portion of it

to meet a contested claim, and now proposes to pay it over on receiving an equal amount of its own notes or their equivalent.

It is useless to reason with an institution which denies that money is in the Treasury which has notoriously been placed there under all the forms of law, and official regulation, which asserts that the Postmaster General can control those funds by his direct order, when he cannot draw on the bank at all; which maintains, that the heads of departments have the same control over public money as private citizens have over their own, and may give it away by their acceptances or direct orders, without appropriation or a lawful consideration rendered to the public; which confidently asserts that I have controlled money, similarly situated, by way of direct order, contrary to the fact; which finds an inconsistency in my denying that debts created by naked acceptances can be paid without an appropriation, when I have myself given such acceptances, before the act requiring appropriations was passed; which finds a like inconsistency in my denying that debts created by naked acceptances, without public services, can be paid without an appropriation; and then admitting, that when legal public services be rendered for them, they may be paid out of the general appropriation; which maintains that because the Postmaster General could settle and pay legal claims against the department before the passage of the act of 2d July, 1836, which took from him the power of settlement, he can do it still; which maintains that its claim might be paid without the interposition of the auditor, in direct contravention of law; which asserts the principles that courts of justice may draw money from the treasury without appropriated by law, in direct violation of the constitution, which finds on the appropriation "for the public *service* of the Post Office Department, provisions of claims based on no service whatever; which undertakes to hold the Postmaster General responsible to its board of directors, in not having made statements to them showing its official action, and the reasons for it, upon a contractor's account; which insists that it was his duty to explain to their board, without being asked, the precise extent and effect of his conditional acceptances; which justifies the payment of a *public deposite of specie* funds in *depreciated paper*, because the receipts and payments were both *in bank notes;* which suffers a faithless public agent to overdraw without authority, and then adduces an official regulation to prevent a misapplication of the *public* funds, as a pretence for changing his overdraft to the department; which finds in the running account of the *treasurer* with the bank, a running account with the Post Office Department; which declares that the Treasurer draws on the account only as endorser of the Postmaster General, when the Postmaster General does not draw at all; which uses epithet, insinuation, and arrogant assertion, in the place of argument, and even condescends to allude to the imputed "doctrines or theories" of the public officer it is addressing.

If the letters of your president were not answered, it was because the time it would have required to tell your bank what is well

known already, was, at the moment of their receipt, demanded for public services of more importance, and in the press of business the letters were lost sight of. It is not pretended, nor can it be with truth, that you did not understand then as well as you do now, that the department did not feel itself authorized to pay the acceptances unless funds accrued to the drawers. The "indifference" of the department was evinced by actually stopping and paying over to you upwards of $40,000 upon acceptances of like character. If the operations of the department, as connected with your bank, were not suspended on your intimation of a purpose to submit your claims to the president, it was because I was not inclined to do or omit any thing to countenance the seizure of public funds you evidently had in contemplation.

I can only add my regret that the bank persists in its determination to usurp the powers of every branch of the Government; of the auditor and comptroller, to settle its accounts; of the Senate, House of Representatives, and President, to make an appropriation; of the Postmaster General and Treasurer to draw a warrant on the Treasury, and a check upon the bank, to pay it; assuming, at the outset, the functions of the courts of justice to determine on the equity, legality, and amount of its own claims. More especially do I regret its resolution to retain the balance of the special deposite admitted to be on hand, evincing, as it does, a determination to disregard obligations, higher, if possible, than those of morality and law.

With due sympathy for the "*denounced and persecuted*" Bank of the Metropolis, I shall, nevertheless, feel it my duty to the public to endeavor to subject it to the constitution and laws of the land by an appeal to the appropriate powers.

Very respectfully, your obedient servant,

AMOS KENDALL.

GEORGE THOMAS, Esq.,
Cashier of the Bank of the Metropolis.

Letters alluded to in the long letter from the bank, dated 11th Jan., 1838.

No. 1.—*Letter No.* 1.

BANK OF THE METROPOLIS,
Washington, February 12, 1836.

SIR: I send you, herewith, a tabular statement of the business between your department and this institution, which we partially discussed the other day, and in relation to which, you requested a written communication, proposing, at the same time, to answer me, in writing, as to your general conclusion on the point of your responsibility, either officially or individually; and particularly what is your conclusion relative to the payment of the whole, or any part, of the claims exhibited in the statement.

Be pleased to let me hear from you on this subject so soon as your business and convenience will permit.

With respect and consideration, &c.,

JOHN P. VAN NESS,
President of the Bank of Metropolis.

Hon. AMOS KENDALL,
Postmaster General.

No. 2.—*Letter No. 2.*

BANK OF THE METROPOLIS,
Washington, July 26, 1836.

SIR: You will recollect that, in an interview with you in February last, relative to the unsettled business between your department and this institution, you requested me to write you on this subject, and assured me of a prompt reply, &c. I did, accordingly, write on the 12th February, sending you, at the same time, a particular statement, &c.

Owing, probably, to other pressing official engagements, you have never answered me. I write now to remind you of this subject, and to intimate that we are very desirous to hear from you with as little delay as possible.

With consideration and respect, your obedient servant,

JOHN P. VAN NESS,
President of the Bank of Metropolis.

Hon. A. KENDALL,
Postmaster General.

Contract with Reeside, referred to in Bill of Exceptions, at page 23.

(Copy.)

No. 1,231. $1,400.

$350.

This contract, made the fifteenth day of October, in the year one thousand eight hundred and thirty-one, between James Reeside, of Philadelphia, Pa., contractor for carrying the mails of the United States, of one part, and the Postmaster General of the United States, of the other part, witnesseth, that the said parties have mutually covenanted as follows, viz: The said contractor covenant with the postmaster—

1. To carry the mail of the United States from Hagerstown, Md., by Welsh Run, Pa., and Mercerburgh, to McConnellsburgh and back, daily, in 4 horse post-coaches, at the rate of three hundred and fifty dollars for every quarter of a year, during the continuance of this contract, to be paid in drafts on postmasters on the route above mentioned, or in money, at the option of the Postmaster General, in the months of May, August, November, and February.

2. That the mail shall be duly delivered at, and taken from, each

post office now established, or that may be established, on any post route embraced in this contract, under a penalty of ten dollars for each offence; and a like penalty shall be incurred for each ten minutes' delay in the delivery of the mail after the time fixed for its delivery at any post office specified in the schedule hereto annexed; and it is also agreed, that the Postmaster General may alter the times of arrival and departure fixed by said schedule, and alter the route, (he making an adequate compensation for any extra expenses which may be occasioned thereby;) and the Postmaster General reserves the right of annulling this contract, in case the contractor does not promptly adopt the alteration required.

3. If the delay of the arrival of said mail continue until the hour for the departure of any connecting mail, whereby the mails destined for such connecting mails shall lose a trip, it shall be considered as a whole trip lost, and a forfeiture of thirty dollars shall be incurred; and a failure to take the mails, or to make the proper exchange of mails at connecting points, shall be considered a whole trip lost; and for any delay or failure, equal to a trip lost, the Postmaster General shall have full power to annul this contract.

4. That the said contractor shall be answerable for the persons to whom he shall commit the care and transportation of the mail, and accountable for any damages which may be sustained through their unfaithfulness or want of care.

5. That seven minutes, after the delivery of the mail at any post office on the aforesaid route not named in the annexed schedule, shall be allowed by the postmaster for the opening the same, and making up another mail to be forwarded.

6. The contractor agree to discharge any driver or carrier of said mail, whenever required to do so by the Postmaster General.

7. That when the said mail goes by stage, such stage shall be suitable for the comfortable accommodation of at least seven travellers; and the mail shall invariably be carried in a secure dry boot, under the driver's feet, or in the box which constitutes the driver's seat, under a penalty of fifty dollars for each omission; and when it is carried on horseback, or in a vehicle other than a stage, it shall be covered securely with an oil-cloth or bear skin, against rain or snow, under a penalty of twenty dollars for each time the mail is wet, without such covering; and for permitting the mail to be injured a second time, for carrying it contrary to the stipulations before recited, the Postmaster General shall have a right to annul this contract. The mail shall be put in a post office, if there be one where the carrier stops at night; if there be no office, it shall be kept in a secure place, and there be locked up, at the contractor's risk.

8. The whole forfeiture and penalties to be incurred in the course of any one trip shall not exceed the sum specified in the third article, which the contractor hereby binds himself to pay to the Postmaster General.

9. The said Postmaster General covenants with the said contractor to pay, as aforesaid, for the carriage of said mail, as aforesaid, at

the rate aforementioned, quarterly, in the months of May, August, November, and February.

10. It is mutually understood by the contracting parties, that, if the route, or any part of the route herein mentioned, shall be discontinued by act of Congress; or in the opinion of the Postmaster General becomes useless, or if a line of stages or steamboats shall be established on the whole, or any part of it, where the mail is not so carried, under this contract, then this contract, or such part of it, shall cease to be binding on the Postmaster General, he giving notice of such event, and making allowance of one month's extra pay.

This contract shall not be assigned by the contractor without the consent of the Postmaster General; and an assignment of the pay shall, in no case, release the contractor, or his sureties, from the responsibilities. Should the contractor, or his agents, be engaged in the transmission of information, by express, on the routes herein designated, more rapidly than the mail, without the consent of the department, the contracts shall be forfeited.

Provided, always, That this contract shall be null and void, in case the contractor, or any person that may become interested in this contract, directly or indirectly, shall become a postmaster, or an assistant postmaster.

No member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon; and this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress, passed on the twenty-first day of April, in the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

And it is mutually covenanted and agreed by the said parties, that this contract shall commence on the first day of January next, and continue in force until the thirty-first day of December, inclusively, which will be in the year one thousand eight hundred and thirty-five.

In witness whereof, they have hereunto interchangeably set their hands and seals the day and year first above written.

(Signed) JAMES REESIDE. (SEAL.)

Signed, sealed, and delivered, in the presence of:

WM. H. DUNDAS,
W. D. ADDISON.

Memorial of the president and directors of the Bank of the Metropolis, in relation to the correspondence between that institution and the Post Office Department.

March 23, 1838.—Laid on the table, and ordered to be printed.

To the honorable the Senate of the United States—the memorial of the president and directors of the Bank of the Metropolis,

Respectfully shewth: That under a resolution of your honorable body of the 9th instant, calls were made on the Secretary of the

Treasury and Postmaster General, for "all the correspondence" between their respective departments and the said bank, and for facts and information touching the conduct of said bank as a depository and fiscal agent, both before and after the suspension of specie payments, and particularly in relation to a certain transaction between it and the Post Office Department; that, in the answers to those calls, there have, inadvertently, been some errors or omissions, both of facts and explanations, deemed necessary to a just estimate of the conduct and character of the institution; that, after having, in its fiscal agency, disbursed, within a few years past, about thirty or forty millions of dollars of public money, and receiving the general approbation therefor, of both the Treasury and Post Office Departments; it is not apprehended that there can possibly be a wish in any other branch of the government, and most assuredly not in this body, to subject our institution to any other than the rules and principles of justice and law, in a controversy which has lately, unfortunately, arisen between it and the Post Office Department; and, therefore, every information and explanation having a just relation to the case, it is trusted, will be freely admitted to its proper consideration. Of this character, it is respectfully submitted, are those contained in the brief communication of the cashier of said institution, hereto appended; which we respectfully pray may be added to the documents in the case, already before the Senate.

JOHN P. VAN NESS, *President,*
On behalf of the President and Directors of the Bank of the Metropolis.

BANK OF THE METROPOLIS,
Washington, March 22, 1838.

BANK OF THE METROPOLIS,
Washington, March 22, 1838.

SIR: I was as much surprised, as yourself, to learn from the late report or answer of the honorable Secretary of the Treasury, under a resolution of the Senate of the United States, of the 9th instant, that since we yielded reluctantly, on the 16th May last, to the necessity of following the example of the northern and eastern banks, in suspending specie payments, after a strenuous and protracted effort by us to avoid it, there had occurred even a single omission, on our part, promptly to pay the drafts of the Treasury, drawn against the amount then due it from us. A little examination of the case, however, enables me to give a satisfactory explanation.

We suspended with a balance in favor of the Treasurer of $375,633 44. On or about the 20th May, 1837, we received from the Secretary of the Treasury a letter (as published in the Globe of the 26th) containing the following inquiry, viz: "What mode do you propose to take, fully and reasonably, to indemnify, secure, and satisfy the Government, and the public creditors, for any branch of your agreement and bond?"

On the 6th June, 1837, our board of directors "Resolved, That the cashier take immediate measures to extinguish the balance now to the credit of the Treasurer of the United States."

On the 12th June, 1837, I wrote the Secretary of the Treasury as follows: "The board of this bank passed a resolution, on the 6th instant, directing me to pay off the balance due the Treasurer of the United States, with as little delay as possible. I am pleased to inform you that the resources of this institution will enable me to accomplish that object *during the present month.*"

On the 20th June the balance was reduced to $62,310 80. On the 18th July to $3,574 91.

The single omission, above referred to, never came to my knowledge. So soon as I saw it adverted to in the Secretary's recent answer, I called at the department for information and explanation; and there found it was a case of a draft for $119, which had been furnished to a person who sold it to a broker, by whom, or whose clerk or agent, it is said to have been presented at our counter, and specie demanded and refused, without even giving me the slightest notice or intimation of the transaction; even the teller knows nothing about it. Such a case drawn even against funds *deposited before* the suspension would, I presume, not take off from the merit awarded us by the Secretary, of having promptly and satisfactorily performed our fiscal duties before the suspension, and of having satisfactorily paid his drafts thereafter. But the case is not such an one as it is inadvertently supposed by the Secretary; for on the 23d October, 1837, his balance of deposite with us was only $71 14; of course this draft, which was dated on the 9th November, could not have been drawn against deposited funds in hand at the *time of suspension.* It is true that on the 7th November, 1837, a new deposite was made of between ten and eleven thousand dollars; but that is known not to have been a specie deposite, and not payable in specie; this draft was, of course, applicable to that deposite; any protest, therefore, in this little case was irregular and unjust.

As to the letter of the Treasurer, dated November 21, 1837, accompanying the Secretary's answer, advising me that certain charges, &c., connected with, and referring to, our account or transactions with the Postmaster General, could not be allowed, and requesting me to reverse them, although it would have been courteous to have replied to it in writing, I certainly meant no disrespect by omitting to do so; I informally and verbally declined a compliance with the request in the letter, but, inasmuch as it required us, it was presumed, at the instance of the Postmaster General, to retrace a step we had taken after mature consideration, and upon the advice of able counsel, (and in relation to which, we were then actually in correspondence with the Postmaster General,) the effect of which would have been seriously injurious to our institution, and we had determined not to recede, it was not deemed important to either the Treasury Department or ourselves that an answer in writing should be given.

As to the answer or report of the Postmaster General, I observe he does not notice my letter in reply to his last, dated 6th March, and which was dated and received by him previous to the adoption of the resolution or call of the Senate. It is true, indeed, that, not long after having received it, he returned it unanswered; but I respectfully presume that can be no reason why it should not be furnished in answer to a call for "all the correspondence" between his department and ourselves, in relation to the subject-matter of the resolution, which is expressly called for.

Inasmuch as this letter is considered a legitimate part of our correspondence, and he has not furnished it, or a copy thereof, I take the liberty of appending hereto the *identical original paper* which was sent to, and afterwards returned by, him: hoping it will have its appropriate place in the exhibition of our controversy.

Very respectfully, your obedient servant,

GEO. THOMAS, *Cashier.*

To JOHN P. VAN NESS, Esq.,
President of the Bank of the Metropolis.

BANK OF THE METROPOLIS,
March 6, 1838.

SIR: Your favor of the 13th January last was received in due time, and would have been promptly answered, had it been deemed important; but as it did not even profess to go into the merits of the difference between us, consisting, as it does, wholly of unfounded assumptions and allegations, being truly a scolding effusion, proceeding, probably, as is usual in such circumstances, from a conscious weakness of your case, and the refutation of your former arguments and reasonings in support of it, I omitted, among many laborious engagements, to advert to it until now. Having, at this time, a little comparative leisure, I shall briefly notice a few points, in justice to ourselves, as well as to another, apart from the general discussion of our subject. I regret extremely that you should have so far forgotten what is due to yourself and your public character, as your letter indicates. I employed facts, law, and argument, in the discussion which you invited; and although you are egregiously mistaken if you think, as you seem to intimate, that I devoted more than a small portion of two months to the purpose of replying to your elaborate communication of Nov. 14th last yet, I felt it due to you, as well as to ourselves, to take sufficient time to answer accurately in our facts, law and reasoning. You *was*, indeed, apprised of the principal causes of our delay in that reply; but delay is not always dangerous, and it may be, perhaps, appropriately observed, that a little of it in making your rejoinder, now before me, might have materially improved its character. Moreover, he who is in the habit of not answering at all when it suits him, even in the face of positive assurances, has very little right to complain of delay in his correspondent, more especially when he loses nothing by it. Wishing only, I

repeat, to use the weapons of fact, law, and argument, I shall not descend with you into the arena of naked abuse.

Little did we now expect from you a denunciatory tirade against an institution for which, as well as for its managers, you very recently professed an unqualified respect, and "in whose honor you expressed a perfect faith, notwithstanding its suspension," &c.

We find, however, consolation in our regret at the self-abused dignity of a high public station, in the consideration that we think we can clearly trace this extraordinary paper to the mortification of defeat in rational discussion. Indeed, your disregard of fact and argument now, as heretofore, are equalled by nothing, except, perhaps, the arrogance of the threat, that you mean to offer us up to the vengeance of the "appropriate powers." It is to those powers that we, in the first instance, proposed an appeal; it is to them that we now wish to appeal for protection, and with a confidence which the noise of your denunciation does not shake. We are willing that you should refer the case as you propose, but let that be *the true case*, and not one "concocted" for sinister purposes.

Passing over much of this condensed summary of all your former errors, cemented by an embittered spirit, I will barely observe that, if I did transiently allude to some of your official tenets and doctrines, not intrinsic in our case, at which you seem indignant, they were only such as had a direct reference to it; and their overthrow was, therefore, legitimately invoked in our support.

You appear to attach importance to the fact that you had, at a former period, paid us $40,000 of acceptances. Now you very well know that this was not done until after long complaint by us, and submission to ill treatment from you. But we see in the fact of that payment no reason why a further sum justly due should not be paid, whilst, in the rapid diminution of your means in our hands, and the increasing urgency, in more than one respect, of our circumstances, together with the strengthened consideration that you had determined not to pay this latter sum, we found good additional reasons for the course we adopted.

As for our having "taken, under the mantle of our corporate character, the distillation of our counsel's concocted venom," (by which you mean to designate him as the author of our answer to you,) it is proper for us to say, that although in one sense, respecting the "venomous" characteristic, we might, perhaps, consider the ascription as complimentary to us; and, although, as we before admitted, we don't blush to avail ourselves of his professional advice in our contest with a powerful antagonist, it is but just to declare, that he is not obnoxious to the charge of paternity you prefer against him.

Without denying that we embodied in our answer some of his legal opinions and principles, we aver that, even to this moment, he has not seen the paper referred to. Let us answer for our own sins, if you will have them such.

As to your reproach that we "evince a determination to disregard

obligations, higher, if possible, than those of morality and law;" it is a mere wanton assertion, destitute of even a particle of that kind of proof which we so abundantly adduced to convict you of charges which you vainly affect to retort upon us.

I shall conclude without going into further details, generally, by disavowing and disclaiming every article of the labored creed which it seems to suit *your purpose* to assign to *us*, since you find our indisposition tamely to submit to your arbitrary dictation.

With less imagination than yours, we might probably digest and arrange one less distorted and mutilated for you, based upon your conduct towards us, which, whilst comporting with your own orthodoxy, might be but little flattering to you in the estimation of others.

By order of the Board of Directors.

I am your obedient servant,

GEORGE THOMAS, *Cashier.*

Hon. A. KENDALL,
Postmaster General of the United States.

Letter referred to in Exceptions, page 14.

POST OFFICE DEPARTMENT,
16th July, 1836.

BANK OF THE METROPOLIS, Washington D. C.:

In conformity with an act of Congress passed at the late session, it becomes my duty to request that you will transfer to the credit of the "Treasurer of the United States, for the service of the Post Office Department," all moneys now on deposite in your bank to the credit of this department, excepting so much as may be necessary to meet the outstanding checks noted at the foot of this letter, or so many of them as may remain unpaid.

For the amount so transferred, please send me a certificate of deposite, and forward a duplicate to the Treasurer, setting forth that such a sum has been deposited in your bank "by the Postmaster General, to the credit of the Treasurer of the United States, for the service of the Post Office Department."

The late act makes it necessary that the account of the Treasurer with the Post Office Department should be kept separately from all other accounts; and your bank is requested to keep it separately on their books.

The following regulations will be observed by the bank in relation to the future receipts and disbursements of post office funds, viz:

1. All sums deposited by postmasters and others, on account of the mail service, will be placed to the credit of the "Treasurer of the United States, for the service of the Post Office Department." The form of a certificate of deposite is herewith forwarded.

2. The moneys thus deposited will be paid, not only upon the checks of the Treasurer, endorsed upon warrants drawn by the

Postmaster General, and countersigned by the Auditor for the Post Office Department, under the words "registered and charged." Forms of warrants are herewith forwarded. No other credit, set-off or deduction will be admitted in this account.

The bank will require the person to whom any warrant may be paid, exeepting banks, to receipt it, giving the receipt its true date, and will charge to the Treasurer, on the day of payment, all warrants paid.

3. At the end of each quarter, the bank will render its account to the Treasurer, on one side of which shall be entered each deposite, with its true date, and the name of the depositor; and on the other, each warrant paid, the true date of payment, and the name of the person in whose favor it was drawn.

4. The bank will, at the end of each month, forward to the Postmaster General, sending a duplicate to the Treasurer, a statement of the Treasurer's account, setting forth each deposite, and each payment, as prescribed in the foregoing section.

A form for these returns is herewith transmitted; and for the convenience of binding them up in a book, you are requested to make them correspond in size with this sample.

Very respectfully, your obedient servant,

AMOS KENDALL.

The following is the signature of the Auditor for the Post Office Department:

CH. K. GARDNER.

The following is the Treasurer's signature:

P. G. WASHINGTON,
Acting Treasurer.